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*in*  
CLASSICAL PHILOLOGY

EDITED BY

BENJAMIN HILL WHEELER, CHARLES EDWIN RUSSETT,  
GEORGE PENTICK BRISTOL, AND  
ALFRED EMERSON

No. IV

THE ATHENIAN CONSTITUTE

GEORGE WILLIS ROYCE, PH.D.

PUBLISHED FOR THE UNIVERSITY

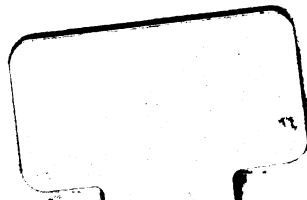
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THE DEVELOPMENT

OF THE

ATHENIAN CONSTITUTION

c

BY

GEORGE WILLIS BOTSFORD, Ph.D.

PROFESSOR OF GREEK IN BETHANY COLLEGE

CORNELL STUDIES IN CLASSICAL PHILOLOGY, No. IV

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## PREFACE.

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I wish to thank Professor George E. Howard, of the Leland Stanford Junior University, for the interest in the study of political and social institutions, which came to me from his instruction, and for the encouragement and help which I have constantly received from him. I also owe a great debt of gratitude to Professor Benj. I. Wheeler, of Cornell University, joint-editor of the Cornell Studies, for his valuable assistance in the preparation of the present number. He has suggested literature, has given his judgment on critical points, has read manuscript and proof with patient care, and has aided and encouraged me in many other ways. I cherish for him as a scholar, teacher, and friend feelings of sincerest respect and love. Dr. A. G. Laird, of Cornell University, has rendered valuable service in the tedious work of verifying citations. Mr. G. W. Harris, librarian of the Cornell University Library, and Mr. W. H. Tillinghast, of the Harvard University Library, are remembered for their kind favors.

GEO. W. BOTSFORD.



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# THE DEVELOPMENT OF THE ATHENIAN CONSTITUTION.

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## CHAPTER I.

### THE PATRIARCHAL THEORY.

It was the belief of the ancients that the family was the primitive society out of which the state developed.<sup>1</sup> They were led to this view partly by observing that the institutions of their state and family were throughout of a similar character,<sup>2</sup>—as were also the relations sustained by the individual to family and state,—but more directly by the fact that each ascending group in the gentile organization of the ancient city had, as its protecting deity and centre of its common religious life, an eponymous (name-giving) hero, from whom the members of the respective groups were supposed to have derived their lineage.<sup>3</sup> Thus Aristotle<sup>4</sup> says: "That society which

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<sup>1</sup> Not only did the philosophic thinker hold this view, but the ordinary man constantly acted on the belief that the state was but a large family, and that ties of a like nature bound him to these two societies. For illustration of this, read any of the Attic orators touching the public obligations and services of the individual.

<sup>2</sup> That the institutions of the state are largely those of the family, the former being developed from the latter, will be fully established, it is hoped, in the following pages.

<sup>3</sup> When a new organization of the state took the place of the old, eponymous heroes were selected for the tribes, in case of the Cleisthenean organization, by the oracle at Delphi; Aristotle, *Ath. Pol.*, ch. 21. This seems to indicate that no other theory of the state than the one above proposed was conceivable or, at least, acceptable. Furthermore, the Athenians clung thus closely to the primitive theory of the state, even after the opportunity for an improved conception had been given in the fictitious nature of the Cleisthenean tribe; cf. Pseud. Dem. Epitaph. §§ 30-1; Rohde, *Psyche*, pp. 158-9, 164.

<sup>4</sup> *Politics*, I. 2, p. 1252 b, 12 ff.

nature has established for daily support is a household (*οἶκος*). . . . But the society of many households for lasting and mutual advantage is called a village (*κώμη*), naturally composed of members of one family, whom some call *δμογάλακτες*. . . . When many villages join themselves perfectly together into one society, that society is a state (*πόλις*).” Plato<sup>1</sup> and Cicero<sup>2</sup> present the same view. Arguments based on the character and institutions of the state are equally cogent to the moderns.<sup>3</sup> That proof, on the contrary, which depends upon the religious belief as to the genesis of the city from a single ancestor through the family, clan, and phratry has for us but little value. We must replace it, therefore, by an inquiry into the development of the city, in accordance with the recognized methods of historical investigation.

The Aryan<sup>4</sup> household (or family), as it appears at the dawn of history, possessed a political, social, and religious organization which rendered it capable of an isolated, independent existence, and was held in partial subjection only by the superior power of the city. The tendencies were centrifugal, the family possessed large individuality and freedom of action, and the ties of kindred and home were stronger than love of country (*city*) or loyalty to the king. Thus the Greek house was monarchical in government,<sup>5</sup>—its *pater* was priest and

<sup>1</sup> Laws, book III. pp. 680-1; Jowett's Trans., <sup>3</sup> Vol. V. pp. 60-1.

<sup>2</sup> De Officiis, I. 17.

<sup>3</sup> Maine, Ancient Law, pp. 118 ff.; Early Law and Custom, ch. III. Spencer, Principles of Sociology, I. p. 730. Bluntschli, Theory of the State, pp. 182-9; he says, “But even in the Aryan nations the beginnings of the state are connected with the bond of the family and the tribe.” Fustel de Coulanges, Ancient City, p. 111 ff. Thumser, Die griech. Staatsalterthümer, pp. 28 ff. Grote, ch. X. of his History of Greece (small edition), I. p. 561. Buchholz, Die homerischen Realien, II. 1, p. 6. Curtius, Alterthum und Gegenwart, I. p. 360. Petersen, Ueber die Geburtstagsfeier bei den Griechen, p. 343. Philippi, Beiträge zu einer Geschichte des att. Bürgerrechts, p. 5. Müller's Handbuch, <sup>2</sup> IV. pp. 18-20. Leist, Altarisches Jus Gentium, p. 113. Krauss, Sitte und Brauch der Südslaven, pp. 1-2, 21, 32-3, and n. 1. Rohde, Psyche, pp. 13, 231.

<sup>4</sup> The term “Aryan” is used throughout this treatise in the sense in which it is employed by anthropologists,—to correspond with “Indo-European” (not “Indo-Iranian”) of the linguists. <sup>5</sup> Aristotle, Politics, I. 7. 1, p. 1255 b, 19.

king, — while a considerable judicial authority, afterwards exercised by the central government, was, in the Homeric age, vested in the near kin.<sup>1</sup> Thus the kinsmen of a murdered man wreaked vengeance in person, accepted a compensation in money, or voluntarily offered their case to the arbitration of the state. The initiative was taken by the *anchisteis*; the clansmen, *phrateres*, and king were helpers. The Roman household is a more striking example of a society organized on the monarchical principle and tending to isolation and independence. The Roman *pater* was, in a stricter sense, priest, judge, and king. He had power of life, death, and sale over his children, lasting while he lived. His authority was antagonistic to that of the state. The latter could not, therefore, have created the *patria potestas*, but finding it already existing, a sovereignty within its borders, tolerated this institution because unable to suppress it, and succeeded in modifying it only in the course of centuries.<sup>2</sup> The *patria potestas*, then, seems to point to a time when the family was an independent community under the absolute rule of its *pater*; while agnation, cutting off the wife from her kin, gave to woman an inferior place and promoted isolation. The Patriarchal Theory, resting on this strong basis, would be further strengthened, if an example could be found of a family actually existing in remote antiquity as a separate and autonomous community, and if the genesis of higher units could be traced from it as a beginning. The advocates of this view have thought that this first point of growth existed in the patriarchal family as we see it, *e. g.*, among the Hebrews.<sup>3</sup> From the family of Abraham developed the tribes and finally the city and kingdom. Another example of the isolated family is found in the Homeric picture of life among the Cyclopes. These are a pastoral people with “neither gatherings for council nor

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<sup>1</sup> *Anchisteis*, or descendants of the same great-grandfather.

<sup>2</sup> Fustel de Coulanges, *Ancient City*, p. 111.

<sup>3</sup> Maine, *Ancient Law*, p. 118, “There is no doubt, of course, that this theory was originally based on the scriptural history of the Hebrew patriarchs in lower Asia.”



oracles of law, but they dwell in hollow caves on the crests of high hills, and each one utters the law to his children and his wives, and they reck not one of another."<sup>1</sup> While these examples of the patriarchal family are, indeed, non-Aryan, there are reasons for believing that it existed also among the Aryans in a period preceding that of the clan. It is natural to assume an epoch in history marked by a tendency to separate into families, even though men were formerly grouped in tribes. This epoch begins when grazing becomes the chief occupation of man.<sup>2</sup> It is easy to see how such a tendency would arise in a country where pasturage was scarce<sup>3</sup> and at a time when the notion of property began to gain distinctness.<sup>4</sup> The instinct of self-preservation, overcoming the tendency to independence and to the individual acquisition of wealth, led finally to an undivided property and a combination of the sons on the death of the father instead of the formerly prevalent separation. Thus the gens arose. Certain writers, as McLennan<sup>5</sup> and Morgan, attempt to displace this theory by the view that the gens is older than the family. They call attention to the statement that the gens is heterogeneous as to kinship,<sup>6</sup> and endeavor to account for this quality by assuming a period

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<sup>1</sup> Od. IX. 112-5. This picture is probably, in part at least, from actual life; yet the elements of reality contained in it seem to have been gathered from non-Aryan sources, for the Cyclopes have not the Aryan religion; — "they pay no heed to Zeus, lord of the Aegis nor to the blessed gods" and they honor not the guest and suppliant; Od. IX. 275 ff.

<sup>2</sup> Spencer, *Principles of Sociology*, I. p. 724.

<sup>3</sup> Genesis, xiii. 5 ff.

<sup>4</sup> Spencer, *Principles of Sociology*, I. p. 717. McLennan, *Studies in Ancient History*, ch. VIII. Morgan, *Ancient Society*, part I. ch. I.; part II. ch. XIV.; part III. pp. 383-508. (Development of the several typical families of history.) These writers have attempted the reconstruction of primitive Aryan history from data supplied by non-Aryan sources. Their method is open to question and its results are wholly unsatisfactory. I mention these authors as representative "anthropologists" well known to the English reader. Bachofen (*Das Mutterrecht*) and Lubbock (*The Origin of Civilization and the Primitive Condition of Man*), were among the earliest to win fame in this field of investigation.

<sup>5</sup> *Studies in Ancient History*, pp. 127 ff.

<sup>6</sup> Pollux, VIII. 111.

antecedent to that of the monogamic family when kinship was reckoned through females only, assuming at the same time a general prevalence of exogamy during the same period. Under such conditions the gens would not be composed of a number of distinct and entire households, but of fractions of households; clansmen would not be kinsmen, but the utmost heterogeneity of relationship would characterize this group. There is no ground whatever for such an hypothesis. Some gentes are indeed spoken of as heterogeneous.<sup>1</sup> This quality, however, did not belong to all the gentes, and was not in any instance prominent enough to influence the conception of the ancients as to their origin. Besides, the heterogeneity, real or apparent, may be explained satisfactorily in the following manner. In the first place, entire families were adopted into the gens. A proof that such a custom may of itself account for the heterogeneity of the gens will appear when we come to consider the nature of the Cleisthenean deme. It may be stated here that the deme exhibited as to kinship of its members the greatest possible heterogeneity; yet such was the influence of pre-existing conditions upon the minds of the Athenians that they could not regard the deme otherwise than as a gens, and gave to it accordingly an essentially family character. If this is true of the Cleisthenean period, how much more must it have been true in the earliest times, when men still lived in villages, and bounded their sympathies by their kinship. The people of Attica, for example, were a mixture of races. Noble families came thither from many parts of Greece<sup>2</sup> and were incorporated by adoption into the village communities. The villagers were glad to receive these strangers, since it increased their wealth and military power.<sup>3</sup>

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<sup>1</sup> Pollux, VIII. 111, referred to above.

<sup>2</sup> Curtius, *History of Greece*, I. p. 322 ff. His chief authority here is Thuc. I. 2.

<sup>3</sup> Thucydides, I. 2-6. But when there was no longer need of military strength, the admission of strangers was stoutly resisted. Krauss, *Sitte und Brauch der Südslaven*, p. 29.

New families of a community were regarded as relatives, though, of course, no relationship could be traced till a real connection should perchance be formed by intermarriage. I suspect, however, that this is not the cause of that heterogeneity which is so great a stumbling-block to some. Rather it rises from the idea of the cognate family, which was a closely related body of kinsmen within the gens and with most sharply defined limits. Individuals outside of the circle, though within the same gens, were regarded as kinsmen only in a relatively faint degree. And when the synoecism of Attica took place, and the *gennetae* became widely dispersed, so as to make intermarriage impracticable, there is no wonder that men forgot the more distant kinship, the cognate family practically superseding the gens.<sup>1</sup>

Again, as a basis for the theory of heterogeneity, Morgan tells us further that the gentes were as a rule exogamous down to historical times, *e.g.*, in Greece.<sup>2</sup> I have not found the slightest trace of a prohibition of intermarriage of near kinsmen among the Greeks, except in a few cases of special nearness, as between parent and child. Such intermarriage of near relatives was the rule among both the East Dorians<sup>3</sup> and the Ionians. Among the Romans, marriage within the sixth degree of relationship was considered sinful.<sup>4</sup> Beyond this, we know of no restriction at Rome; and this of itself is not sufficient evidence to prove exogamy of the gens. There was in ancient India a considerable variety of restrictions as to the

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<sup>1</sup> Philippi, *Geschichte d. att. Bürgerrechts*, p. 191. Among the South-Slavonians, where the gentile system remains to-day as a living organism, the feeling of kinship extends even to the phyle, while in the phratry it is surprisingly vital. The members of the House-community are, in almost all cases, of kindred blood. Krauss, *op. cit.*, pp. 20-1, 33, 40, 75.

<sup>2</sup> Morgan, *Ancient Society*, p. 224. He has derived all his information, it appears, from Grote.

<sup>3</sup> *Laws of Gortyn*. This speaks merely of heiresses; but when the custom of marrying an heiress to her nearest kinsman has arisen, exogamy, if it once prevailed, cannot long survive.

<sup>4</sup> Schrader, *Sprachvergleichung und Urgeschichte*, p. 385 (first ed.) thinks that this was not a primitive restriction.

intermarriage of near kin. Ordinarily the statement occurs of a prohibition of intermarriage between *Sapindas* (Greek *Anchisteis*).<sup>1</sup> This is usually accompanied by a prohibition also within the *gotra*, or gens.<sup>2</sup> The first is apparently the older usage, the second being an outgrowth from it in accordance with the principle that "usage which is reasonable generates usage which is unreasonable,"<sup>3</sup>—a principle which has a wide application in the genesis of Hindoo customs. In the Aryan period there seems to have been no restriction except in cases of special nearness.<sup>4</sup> The Aryan gens was not, therefore, exogamous. Hence the objection cannot be made to the theory of development from family to gens that "the family does not enter whole into the gens."<sup>5</sup> The same authority which declares that the city is made up of a certain number of gentes declares also that the gens is composed of a certain number of families.<sup>6</sup> Cases of polygamy, polyandry, and promiscuity among the Aryan nations, treated by McLennan as survivals from pre-monogamian stages of development, prove on closer inquiry to be later growths under the influence of peculiar conditions.<sup>7</sup> Leist holds the

<sup>1</sup> Gautama, IV. 3. 5.

<sup>2</sup> Âpastamba, II. 5. 11. 15; Vasishtha, VIII. 1.

<sup>3</sup> Maine, *Ancient Law*, p. 18.

<sup>4</sup> For further data leading to this conclusion, see Schrader, *Sprachvergleichung und Urgeschichte*, p. 2566 n. Cf. Weber, *Indische Studien*, X. pp. 75 ff. Zimmer, *Altindisches Leben*, p. 323, regards the restriction enjoined by the Dharmaçastra as a development from a far narrower restriction. In the Rigveda, marriage between brother and sister is considered sinful (Rv. X. 10); yet Hindoo mythology gives many examples of such unions; Zimmer, *loc. cit.*

<sup>5</sup> Morgan, *Ancient Society*, p. 469.

<sup>6</sup> Gilbert, *Handbuch*, I. p. 111, n. 1.

<sup>7</sup> Leist, *Graeco-italische Rechtsgeschichte*, p. 78, n. 1; *Altarisches Jus Gentium*, p. 419, n. 8; p. 123. Cf. Delbrück, *Die indogermanischen Verwandtschaftsnamen*, Band XI. der *Abhandl. d. phil.-histor. Classe d. kgl. sächs. Gesellsch. d. Wiss.*, 1889, p. 545, who proves definitely that polyandry did not exist in Aryan times, that peculiar conditions brought it into being in Sparta. Zimmer, *Altindisches Leben*, p. 325, declares that it was impossible among the ancient Hindoos. Later, however, an occasional example occurred, Delbrück, *op. cit.*, p. 538.

view that monogamy was the earliest form of marriage, Aryan and human, and that promiscuity was a degradation from it among men who passed their lives in indolence or in hunting, fishing, and war, abandoning the maintenance and supervision of children to the women of the tribe.<sup>1</sup> This theory is probable in itself, and explains the known facts more satisfactorily than any other proposed. The Aryans were, for the most part, unaffected by the common degradation and maintained, therefore, as a rule, the monogamic marriage. If Leist's view is correct, as it seems to be, all gentes which have had an organic growth must have sprung from families.<sup>2</sup>

Evidence in favor of the Patriarchal Theory of a positive nature and bearing greater conviction is yet to be adduced. Those gentes which are mentioned as heterogeneous, whose members were unable to discover any relationship in blood with each other and whose ancestors were said to be fabulous heroes, arose before the dawn of history. We are prevented thus from tracing their origin and growth with the certainty and precision of eye-witnesses. Yet could these differ in nature materially from those which arose in historical times, and whose development we are able to trace? A good example of the latter class is the gens of the Buselidae at Athens. It consisted of five houses sprung from a real ancestor; its members were bound together by the ties of a common name, blood and worship; it wanted only autonomy

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<sup>1</sup> Altarisches Jus Gentium, p. 123.

<sup>2</sup> There were gentes of later formation, arising from various causes, which were largely or wholly fictitious. Hearn, *Aryan Household*, pp. 297-8; Krauss, *Sitte und Brauch der Südslaven*, pp. 57-8. The view above presented may be considered well established for the Aryan race as far back as the evidence afforded by the comparative study of language reaches. Bopp, Kuhn and Fick, the three eminent authorities on Indo-European philology, support this theory, while no student of any prominence in this field has ever believed in "Mutterrecht." Delbrück, *op. cit.*, pp. 386-8, offers convincing evidence in favor of the Patriarchal theory. Cf. Schrader, *Sprachvergleichung und Urgeschichte*, p. 546.

to make it a perfect gens.<sup>1</sup> Again, among the South-Slavonians the members of a House-community are in almost all cases related in blood.<sup>2</sup> A House-community is composed of several families and corresponds closely to a gens. Its members can trace their kinship with one another, especially since the community never grows large,—so as to contain over seventy souls or thereabout,—but readily divides into several new communities.<sup>3</sup> These new communities still retain for one another the feeling of kinship, still deliberate in common concerning the welfare of the whole, still hold certain property in common. A union of such related communities is called a “Brotherhood” (*bratstvo*, *φρατρία*).<sup>4</sup> Were these communities

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<sup>1</sup> Buselus had five sons; these grew up and became the heads of families; thus five households grew out of the one household of Buselus; Demosthenes, XLIII. 19. This group of families retained for one another a feeling of kinship, and was called a gens (*γένος*); Dem. XLIII. 20. The families composing it were called households (*οἰκοί*). It possessed all the characteristics of a gens, its members being bound together by the following ties:

I. The possession of a common name, the patronymic Buselidae; Dem. XLIII. 79.

II. The possession of a common burial place; Dem. XLIII. 79; cf. LVII. 28.

III. Mutual rights of inheritance according to propinquity; Dem. XLIII. 3, 51–2.

IV. *a.* Right to marry an heiress; Dem. XLIII. 54–5. *b.* Duty of endowing a destitute orphan girl; Dem. XLIII. 54–5.

V. Duty of performing (or assisting at) the *nomisomena* and worship of the dead; Dem. XLIII. 62–4, 66–7.

VI. Duty of providing against the extinction of the several households; Dem. XLIII. 74–5.

VII. Duty of vengeance in case of homicide; Dem. XLIII. 57–8. It is evident that this gens differed in no respect from those which existed before the city. If it had been autonomous and depended on its own strength for protection, it might have grown much larger. But disintegration set in early. While three (or four) of these families intermarried and thus maintained with each other the closest relations (Dem. XLIII. 23, 55, 73), the household of Stratius did not intermarry, and had a separate tomb (Dem. XLIII. 79–80), and became thus, in time, cut off from all those privileges and duties connected with the gentile bond. See *e.g.*, Dem. XLIII. 56. From this we may understand how the ties of blood within the gens may be weakened and finally forgotten.

<sup>2</sup> Krauss, *Sitte und Brauch der Südslaven*, p. 75.

<sup>3</sup> Krauss, *loc. cit.*, and pp. 111–4.

<sup>4</sup> Krauss, *Sitte und Brauch der Südslaven*, p. 33 and n. 1; also p. 40; cf. Zimmer, *Altindisches Leben*, p. 160.

autonomous and self-protecting, they would naturally hold together longer, and with increase in size would come inability to trace kinship of member with member. At the same time the ancestor would be placed much farther back into the past than he really belonged and the events of his life hidden beneath a rich growth of legend.<sup>1</sup> When this should be accomplished, we should have the gens as described by the ancient writers.

It would be a fruitless task to attempt a representation in detail of the family in the period of its isolation. It would be useless in its results, even granting such a thing to be possible ; for in the history of the Aryan races, in the remotest times of which we have knowledge, we are obliged to deal with families as component members of the gens, and not as isolated units. Long before the dawn of history, the family had developed into the gens in the manner to be explained hereafter. I shall endeavor here to give a brief consideration of the Aryan family as it existed within the tribe in the earliest times of which we have any knowledge.

The Aryan family was in the main monogamic<sup>2</sup> and under the control of the father. A man desiring a housekeeper and

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<sup>1</sup> Krauss, *op. cit.*, p. 42.

<sup>2</sup> A strictly monogamic family is not to be assumed, in view of all the facts. As Schrader, *Sprachvergleichung und Urgeschichte*, pp. <sup>2</sup> 559-60, has observed, traces of polygamy occur among most of the Aryan races at the dawn of their history : for the Vedic Hindoos, Zimmer, *Altindisches Leben*, pp. 323-5; for the ancient Persians, Hdt. I. 135; for the Gauls, Caesar *de Bel. Gal.* VI. 19 (the interpretation of this passage is doubtful); for the ancient Germans, Tacit. Germ. XVIII. (polygamy is here exceptional); for the modern South-Slavonians, Krauss, *Sitte und Brauch der Südslaven*, p. 229. On the other hand, if polygamy had been widespread it would have impressed itself more distinctly upon early Aryan society, which, in point of fact, rests wholly on a basis of monogamy. In many cases, polygamy is seen clearly to be of later growth, *e. g.*, among the South-Slavonians, — to avoid extinction of family through childlessness. There was probably no law or sentiment against polygamy in the beginning; but the method of procuring wives — by robbery or purchase — made it, for the most part, impracticable for any but the powerful or the wealthy to procure more than one wife, cf. Delbrück, *Die indogermanischen Vewandtschaftsnamen*, pp. 386-8; Starcke, *Die primitive Familie in ihrer Entstehung und Entwicklung*, Leipzig, 1888; Schrader, *Sprachvergleichung und Urgeschichte*, pp. <sup>2</sup> 534-5.

slave, obtained a wife for that object by robbery or purchase. In the case of strong, warlike gentes robbery was the usual means, and the wives under such circumstances were taken from neighboring clans. Weaker gentes were obliged to procure their wives by purchase either from within or from without the gens.<sup>1</sup> It follows from these conditions that the father was proprietor of wife and children, and had powers of life, death, and sale over all under his authority. This power he maintained only so long as he possessed the necessary physical strength. When old and weak he was liable to be put to death by his mature sons.<sup>2</sup> The mother enjoyed hardly more influence than the child. She must work constantly to support the family,—she cannot eat with her husband, but must wait till he is satisfied and then eat what remains.<sup>3</sup> At her husband's death, she was killed on his grave.<sup>4</sup> The children were the father's property and differed little from slaves. They continued under their father's authority till his death or old age and then the sons took the property to themselves. Sometimes it was divided equally among the brothers; but more often the eldest gained the upper hand and compelled his brothers to serve him. If such a family held together

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<sup>1</sup> It is wrong to suppose that all gentes were exogamous, or that near relatives were, as a rule, forbidden to intermarry. This will be discussed in the following chapter.

<sup>2</sup> This holds for the ancient Germans, Scandinavians, and Vedic Hindoos; Zimmer, *Altindisches Leben*, pp. 326–8. Among the South-Slavonians, old people were treated with great disrespect and neglect; Krauss, *Sitte und Brauch der Süd-slaven*, pp. 94–5; cf. p. 81.

<sup>3</sup> This was the custom among the South-Slavonians, Krauss, *op. cit.*, p. 96, and among the ancient Greeks, since Homer speaks of the women taking their meals in their own apartments.

<sup>4</sup> Schrader, *Sprachvergleichung und Urgeschichte*, p. 565. This was the custom among the Thracians (*Hdt.* V. 5), the Germans (Zimmer, *op. cit.*, p. 330), the Slavs (Zimmer, *loc. cit.*), occasionally occurred among the Greeks (Paus. IV. 2), may have existed among the most ancient Hindoos, and seems to have been Aryan (Zimmer, *op. cit.*, pp. 329, 331). The object of this cruel usage was probably to make the life of the father dear to the household. Whatever form of ancestor-worship existed at this time must have been grounded upon fear rather than upon love and piety.



long, it became a gens. Daughters were prized less highly than sons, since they were useless in war and the chase. Warlike gentes found it more economical to obtain their wives by robbery than to rear them from childhood,—hence the prevalence of infanticide of females among such gentes.<sup>1</sup> Relationship was necessarily agnatic.<sup>2</sup> The wife was cut off from her kindred and was to them as one that is dead. Her relatives were enemies of her husband's gens. At this early period there was no love of country, since the gentes were nomadic or half-nomadic; there was no ancestor-worship of the noble type found among Greeks and Hindoos, while men put to death their aged parents. Selfishness was, in general, the rule of life. Yet there must have been some affection between parents and children, some love of brother for brother, else no development of higher moral principles had been possible.

Such in outline was the primitive Aryan family. The next stage in its growth will now be considered. There are strong reasons for believing that this stage is represented in its main features by the House-community as it exists to-day among the South-Slavonians.<sup>3</sup> The organization and general character of this type of family is as follows. The South-Slavonian House-community consists of not more than 65–70 members, all related within the fourth or fifth degree (agnatic).<sup>4</sup> The government is monarchical,<sup>5</sup> the house-father wielding practi-

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<sup>1</sup> Schrader, *Sprachvergleichung und Urgeschichte*, pp. 562–4. Among the ancient Hindoos "to have daughters was a sorrow"; Zimmer, *Altindisches Leben*, p. 320. The house and name depend upon sons not daughters; Krauss, *Sitte und Brauch der Südslaven*, p. 472.

<sup>2</sup> There was an Aryan name for father's brother but not for mother's brother; Schrader, *op. cit.*, p. 539. Cf. Delbrück, *Die indogermanischen Verwandtschaftsnamen*, pp. 586–8. Again, no common Aryan designation existed for son-in-law (Schrader, *op. cit.*, p. 542), nor for any of the wife's relatives, *id.*, pp. 543–4. Thus no kinship was acknowledged between the families of husband and wife. Cf. Delbrück, *op. cit.*, p. 382.

<sup>3</sup> Schrader, *op. cit.*, p. 569.

<sup>4</sup> Krauss, *op. cit.*, p. 75. Most families are far smaller than this.

<sup>5</sup> Krauss, *op. cit.*, p. 80.

cally almost unlimited authority. There is, indeed, a family council, made up of the adult males, before which the house-father must lay all business of importance; yet it rarely happens that anyone here opposes his will.<sup>1</sup> He is never called proprietor, — but manager, elder, or the like, — and has no more right to the property than the other grown up men.<sup>2</sup> His duties are as follows: he supervises the labors of the members personally, admonishes the culpable, keeps order in the house, and settles quarrels among those under his authority. He represents the whole family and each of its members before the courts, protecting them from every injustice. He must himself act impartially towards all. On the other hand, nothing of importance in the family may be undertaken without his consent, and to him must be accorded the highest honor and respect by all the members of the Community. He is treasurer also of the common funds and may expend money to meet the needs of the household.<sup>3</sup> He has the right to nominate his successor. In most cases his oldest son or younger brother is thus appointed. But if he dies without making a nomina-

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<sup>1</sup> The council generally meets after supper; — in winter, around the kitchen fire, in summer, under a tree in the court; Krauss, *op. cit.*, p. 101. The business generally has reference to the giving out of a maid in marriage, construction of buildings, or any important financial matter. The house-father first states the question and advises as to what ought to be done. Rarely does anyone speak unless invited to do so; id. pp. 101-2. "When an older man speaks, a younger should keep silent," is a Slavonian proverb; id. p. 102. No vote is taken, but there must be unanimity; id. p. 102. If any man dissents, he is overwhelmed by the persuasions of his relatives both male and female; id. p. 103.

<sup>2</sup> Krauss, *op. cit.*, p. 79: "*Er ist bloss der Erste unter mehreren ihm Gleichberechtigten.*" Schrader, *Sprachvergleichung und Urgeschichte*, p. 571, is of the opinion that to restore the Aryan family, we must substitute for this limited authority the severe *potestas* of the Roman type. While this seems true for the primitive Aryan family, there was probably a considerable weakening of the *potestas* in many tribes before the separation of the races. A *patria potestas* of the Roman type must not be assumed for the early Greeks, Slavonians, Hindoos, and Germans.

<sup>3</sup> Krauss, *op. cit.*, pp. 88-9. As special honors are mentioned his right to wear better clothes than the others and to serve his children before the others at table.

tion, the oldest man of the community generally succeeds, if qualified.<sup>1</sup> The house-father is liable to deposal under the following circumstances :<sup>2</sup>

1. When he has reached the age of 60. At this time of life he generally resigns voluntarily.
2. When he by his conduct brings shame upon the family : *e. g.*, when he is convicted of a crime or of drunkenness, or spends the public money extravagantly or selfishly.
3. When he shows partiality.
4. When he is afflicted by some chronic sickness which hinders him in the performance of his duties.

There is also a house-mother who was originally the wife of the father ; yet she is often passed by in favor of the most intelligent and prudent woman of the household. The house-mother superintends the women in their work, appointing to each her task. No one is allowed to sit idle. She sees that the guests are well entertained and that they have sufficient food and drink.<sup>3</sup> No expenses may be incurred without the house-father's approval. Her influence in the family is great, and she also enjoys in return for her labor, certain honors and privileges.<sup>4</sup>

Each member of the community is obliged to render unconditional obedience to the head of the house, to require the same of his wife, to care for house property as if it were his own, to live in peace and concord with his fellows. He has a right to take part in the consultations of the family, to give his opinion and vote, to have decent clothing for himself, wife,

<sup>1</sup> In the latter case, the eldest calls the council, announces the death of the chief, and advises to consult as to a successor. Then the next to the eldest arising advises to hold to the ancient customs and to consider the eldest as chief. Then follow the ceremonies of paying respects to their new chief ; Krauss, *op. cit.*, pp. 85-6.

<sup>2</sup> Krauss, *op. cit.*, p. 86. The deposal is made in the council under the lead of the eldest (after the chief).

<sup>3</sup> Krauss, *op. cit.*, pp. 89-90.

<sup>4</sup> Krauss, *op. cit.*, p. 90.

and children, and a little money for pet indulgences, and occasionally to entertain guests. Himself, wife and children may share in the religious privileges of the community, and may expect protection and just treatment. Expenses for the marriage of son or daughter are provided for by the household.<sup>1</sup> If he goes abroad to seek his fortune and fails, he is at liberty to return to his community.<sup>2</sup>

The marriage ceremonies of the South-Slavonians have, as it appears, grown out of the custom of capture, on the one hand, and the institutions of hearth-worship and ancestor-worship on the other.<sup>3</sup> The father, or nearest male relative, gives the maiden in marriage into the power of her husband.<sup>4</sup> The custom of robbery has, for the most part, ceased at this stage, and the relations between the two families are peaceful and friendly.<sup>5</sup> The object of marriage from the standpoint of the male is to have a housekeeper and a mother of his children.<sup>6</sup> The youth becomes a man at marriage, and takes, accordingly, an independent standing in the community.<sup>7</sup> There was formerly among the South-Slavonians a prohibition of intermarriage within the phratry (*bratstvo*); yet this prohibition did not originally exist, and has now again fallen into

<sup>1</sup> Krauss, *Sitte und Brauch der Südslaven*, p. 101.

<sup>2</sup> *Id.*, p. 99.

<sup>3</sup> The bridegroom and party, arriving at the house of the bride's father, find the doors barred, and must purchase admission; Krauss, *op. cit.*, p. 394. In Bulgaria it is customary at the bridegroom's door to throw a man's girdle about the bride and attempt to draw her into the house. She at first resists, but finally, receiving a promise of something which she desires, allows herself to be drawn in; *id.*, p. 449. For ceremonies connected with the hearth, *id.*, pp. 395, 386; cf. Zimmer, *Altindisches Leben*, p. 312; *Rigveda X.* pp. 85, 38.

<sup>4</sup> In Croatia, the bridegroom slaps the bride's ears to show that he is her master. Krauss, *op. cit.*, p. 385; cf. *Rigveda X.* 85, 24-5.

<sup>5</sup> Kinship through marriage is not recognized, — the South-Slavonians call their wife's kinsmen "*friends*"; Krauss, *op. cit.*, p. 14. This holds for the Aryans in common; Delbrück, *Die indogermanischen Verwandtschaftsnamen*, p. 591. As time went on a kinship developed; *id.* See also Schrader, *op. cit.*, p. 545.

<sup>6</sup> Krauss, *op. cit.*, pp. 496, 493. Cf. Zimmer, *op. cit.*, pp. 318-9, for Vedic India.

<sup>7</sup> Krauss, *op. cit.*, p. 490.

disuse.<sup>1</sup> The wife is mistress within the house (where this exists apart from the community), and even of her aged parents-in-law;<sup>2</sup> yet remains distinctly inferior to her husband.<sup>3</sup> She drudges to support the household, and is rewarded with little affection and kindness from her lord.<sup>4</sup> Monogamy is the rule, but if the wife is sterile, another may be chosen.<sup>5</sup> The present Slavonian custom permits the widow to marry again; yet here there has taken place a great change from early Aryan usage.<sup>6</sup>

Children are under the absolute power of the father.<sup>7</sup> Sons are especially prized, since on these alone depend the continuance of family and name.<sup>8</sup> Children must respect and obey

<sup>1</sup> Krauss, *Sitte und Brauch der Südslaven*, p. 40. Inter-marriage within the eighth and ninth degree, male line, and within the fourth degree, female line, is now considered a sin and shame; id., p. 336. Other impediments to marriage are bodily defects: blindness, stinking breath, impotence, etc.; *loc. cit.*

<sup>2</sup> Krauss, *op. cit.*, pp. 479, 481, 494-5. Cf. Rigveda, X. 85, 46.

<sup>3</sup> South-Slavonian proverbs: "he who whips not his wife is no man"; "the bitch may bark, the wife must hold her tongue"; "a man of straw is equal to a woman of gold"; Krauss, *op. cit.*, 94, 483. The inferiority of the wife appears also from the fact that no Aryan word existed to designate husband and wife as a pair; Delbrück, *op. cit.*, p. 440.

<sup>4</sup> Selfishness of husband, Krauss, *op. cit.*, pp. 527-8; often desires the death of his wife, and refuses to be comforted if she recovers from sickness; id., p. 528. She has no voice in the management of the house; id., p. 94. She is not adviser and friend in any high sense; id., p. 499. "A prudent wife is a great blessing,"—a proverb which must have arisen in comparatively late times, and does not represent the opinion prevalent to-day. She is regarded merely as a grown-up child; id., p. 501.

<sup>5</sup> Krauss, *op. cit.*, p. 229. Cf. pp. 530, 533, 553. Āpastamba, XI. 5. 11, 13, probably goes back to the earliest times. Polygamy was permitted in primitive times, but could not have been extensive; Schrader, *Sprachvergleichung und Urgeschichte*, p. 560; Zimmer, *Altindisches Leben*, pp. 324-5.

<sup>6</sup> The widow must not marry again; Delbrück, *op. cit.*, p. 555. It was the Slavic wife's duty to kill herself on the death of her husband; Zimmer, *op. cit.*, p. 330.

<sup>7</sup> "The father is master of their lives as God of their souls"; Krauss, *op. cit.*, p. 471. Yet his power is undoubtedly less severe now than in early Aryan times.

<sup>8</sup> Krauss, *op. cit.*, p. 472, 540-1. No wish is expressed in the Vedic songs for the birth of a daughter. Cf. Atharva-Veda, VI. 11. Infanticide of daughters is common; Krauss, *op. cit.*, p. 544; Zimmer, *op. cit.*, p. 319.

their parents,<sup>1</sup> support them in old age, perform for them the funeral rites, and hold them in remembrance before God and the world.<sup>2</sup> The eldest is most prominent among the sons, and generally steps into the place of the deceased father.<sup>3</sup> Where sons are wanting, adoption is resorted to. The adopted son must renounce family name, patron saint, and kinship with his father for corresponding connections with the family which he enters.<sup>4</sup> An heiress is allowed to choose her own husband, if there are no male relatives within the household to perform this service for her.<sup>5</sup>

It constantly happens that House-communities of this kind separate, for various reasons, into their component families.<sup>6</sup>

<sup>1</sup> Krauss, *Sitte und Brauch der Südslaven*, pp. 84, 94.

<sup>2</sup> Krauss, *op. cit.*, pp. 470-1.

<sup>3</sup> This applies only when the father is at the head of the community. In other cases, the mature sons are, at the death of the father, on an equal footing. For prominence of eldest son, Delbrück, *op. cit.*, p. 578. Eldest son took the place of the deceased father; Zimmer, *Altindisches Leben*, p. 328.

<sup>4</sup> Krauss, *op. cit.*, p. 470. The Slavonian customs of adoption are remarkably similar to those of the Greeks, Hindoos, etc. The patron saint has now taken the place of the family gods of pagan times.

<sup>5</sup> Krauss, *op. cit.*, p. 468. If she has relatives, she chooses one of these. Cf. Bücheler und Zitelmann, *Das Recht von Gortyn*, p. 150, for the Greeks. Under any other circumstances the maid must wait at home for a wooer; Krauss, *op. cit.*, p. 201; Zimmer, *op. cit.*, p. 305. It is esteemed a great misfortune not to get a husband; Krauss, *loc. cit.*; *Rigveda*, I. 123, 11; VII. 25; *Atharva-Veda*, VI. 60; III. 18. An exaggerated value is laid on maidenly purity; Krauss, *op. cit.*, p. 197.

<sup>6</sup> Krauss, *op. cit.*, p. 111, gives the following reasons for separation:

1. The women do not agree. Their quarrels are probably not confined to the female sex.

2. Private property arises in the Community. This is now a frequent cause of separation, but in early Aryan times it must have occurred far more rarely.

3. Injustice on the part of the ruler or his wife. It is likely that sensitiveness to this wrong has increased with the lapse of centuries.

4. When a soldier has many children, whom the Community does not wish to support. This cause has come in with the changed environment of the Community.

5. When one of the members is lazy or a thief, he is excluded. When the offense is light he is allowed to retain his property; and this causes a partial division. A grave crime may exclude a man, with confiscation of property.

6. When the Community grows too large.

In one sort of division, the families move into separate houses, at some distance from one another, that a wider extent of space may be occupied, yet still retain their property in common.<sup>1</sup> In another sort, each family takes its share of property and thus becomes a new House-community exactly like the old. The new House-communities, thus arising, still retain for one another a feeling of kinship, occupy a continuous territory, hold some property in common, and deliberate in a general assembly concerning the welfare of the whole. The union of House-communities is called a "Brotherhood" (*bratstvo*, Gk. *φρατρία*). New Brotherhoods may be formed in this manner at any time.<sup>2</sup> These vary greatly in size, containing from 30 or 50 to 700 or 800 fighting men, a *bratstvo* of 200 warriors being sufficiently strong to secure respect.<sup>3</sup> The *bratstvenici* are bound together not only by the sentiment of common origin and blood, but also by the common worship of a protecting deity from whom all the members of a *bratstvo* claim descent. Since the introduction of Christianity, a patron saint has taken the place of the deity; but the eponymous hero is still celebrated in song though shorn of his divine qualities.<sup>4</sup> In every *bratstvo* there still remains the periodical festival in honor of the hero ancestor (or patron saint), which keeps alive the

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<sup>1</sup> Krauss, *Sitte und Brauch der Südslaven*, p. 114.

<sup>2</sup> Krauss, *op. cit.*, p. 33; cf. n. 1. Common property: church, grave-yard, mills, pastureland, *id.*, p. 40. Members of a *bratstvo* regard each other as kinsmen, and formerly would not intermarry. Furthermore, they help one another on every occasion of need. If a man's house burns, his fellows (*bratstvenici*) contribute to the re-building. If a man wishes to marry but cannot afford it, his fellows help him. If, on the other hand, he wishes to sell real-estate, he must offer it first to his *bratstvenici*; if these do not care to purchase, to the members of the other *bratstva* of his tribe,—he is not allowed to sell it to a stranger; *id.*, p. 40.

<sup>3</sup> Krauss, *op. cit.*, pp. 33, 40. A brave man counts for nothing in a weak *bratstvo*; *id.*, pp. 33-4. Members of a *bratstvo* try to maintain its honor and will not marry into an inferior *bratstvo*; *id.*, p. 41.

<sup>4</sup> They celebrate the hero ancestor of their *bratstvo* in an epic poem of mythical contents ascribing to him all manner of wondrous deeds and placing him as far back as possible in the past; Krauss, *op. cit.*, p. 42.

phratric idea even where, for various reasons, it is growing faint.<sup>1</sup> The *bratstvenici* are bound together also by the blood-feud, which prevails to a remarkable extent even at the present day.<sup>2</sup> Every *bratstvo* has an assembly in which the heads of the component House-communities enjoy equal rights of speech and suffrage.<sup>3</sup> In war the *bratstvenici* stand together in one band<sup>4</sup> under their elective military chief.<sup>5</sup>

A *bratstvo* sometimes consists of a single village, but more frequently of several villages.<sup>6</sup> When it grows large it becomes a tribe (*phyle*, *pleme*), its component House-communities at the same time developing into *bratstva*.<sup>7</sup> The district occupied by a *pleme* is called a *župa*,<sup>8</sup> and its ruler *župan*.

<sup>1</sup> Krauss, *Sitte und Brauch der Südslaven*, pp. 51-4.

<sup>2</sup> When a member of a *bratstvo* is killed by a member of another *bratstvo*, the fellows of the murdered man wreak vengeance on the murderer, if he can be found; if not, on the father, brother, or son; if none of these can be found, on one of his *bratstvenici*; Krauss, *op. cit.*, p. 139. When compensation is allowed, it is paid by the entire *bratstvo* of the offender; id., pp. 39-40. The phratric name is borne by every member as a protection against murder, since no one would be likely to kill a man who was known to belong to a strong *bratstvo*; id., p. 47.

<sup>3</sup> Krauss, *op. cit.*, pp. 38-9. The other adult males of the *bratstvo* may attend the assembly and cry "yea" and "nay." All questions of importance come before the assembly. For Germany and India, see Zimmer, *Altindisches Leben*, p. 174.

<sup>4</sup> Krauss, *op. cit.*, p. 39. For India, *Rigveda*, X. 84, 3; VII. 79, 2; V. 61, 1. For the ancient Germans, Tacitus, *Germania* 7. For the ancient Greeks, *Iliad*, II. 362-4. For the ancient Italians, Leist, *Graeco-italische Rechtsgeschichte*, pp. 139 f.

<sup>5</sup> Krauss, *op. cit.*, p. 38. It is evident that anciently the leadership of the *bratstvo* was hereditary (id., p. 35), as is the present office of *knez* (king) in some phratries. But the elective military official (*glava*, *sterešina*) has in many *bratstva* gained the upper hand in administrative functions.

<sup>6</sup> Krauss, *op. cit.*, p. 39. Sometimes several *bratstva* are represented in one village. The village is recognized as the seat of a family, — hence the name of most villages are patronymic; id., p. 23.

<sup>7</sup> Krauss, *op. cit.*, pp. 20-21, 2. Partially fictitious tribes — those made up of several *bratstva* which are not branches of an original *bratstvo* — occur rarely; id., p. 57. Sometimes a *bratstvo* for protection enters a foreign *pleme*; id., p. 58.

<sup>8</sup> This word signified originally "household," then "village-community," then "district" and especially "district occupied by a tribe." The word "*župan*" (tribe-leader) has had a similar development from its original meaning "householder" or "house-father"; Krauss, *op. cit.*, pp. 18-19. *Viṣpati* has gone through a similar development among the Hindoos; Zimmer, *op. cit.*, p. 171.



Each župa contains at least one stronghold in some easily defended spot (as on a steep hill),<sup>1</sup> which formerly served also as the religious and political center of the tribe.<sup>2</sup> The duties of the župan were originally administrative, judicial, military, and probably religious;<sup>3</sup> but in the course of time the military functions passed into the hands of the military chief (*Polemarch, Herzog, Vojvoda*). The appointment of the latter was made by the župan and ratified by the people. Sometimes he came to be also the chief civil magistrate.<sup>4</sup> The župan's income was originally derived from a portion of the public land set apart for his use, and from free gifts of his subjects.<sup>5</sup> The political institutions of the Slavic tribe have undoubtedly developed from those of the household,<sup>6</sup> and the idea of com-

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<sup>1</sup> Krauss, *op. cit.*, p. 22. Cf. *Ἀκρόπολις* of the Greeks. For India, Manu, VII. 70, 71; Institutes of Vishnu, III. 6.

<sup>2</sup> Krauss, *op. cit.*, p. 22. Here the elders of the tribe met for deliberation and from here they were accustomed to set out for war. Cf. the *samiti* (tribal-assembly) of the Hindoos; Zimmer, *op. cit.*, p. 174. Assemblies of Attic tribes continued through historical times.

<sup>3</sup> Krauss, *op. cit.*, pp. 26, 22. Cf. the *rdjan* of the Hindoos; Zimmer, *op. cit.*, p. 158. The latter was originally hereditary (id., p. 162), but later some elective monarchies arose, in which the king was probably chosen from some noble family or gens (id., pp. 162-3) as among the South-Slavonians; Krauss, *op. cit.*, pp. 30-31. The king was in ancient India protector of the people (Rigveda, III. 43, 5), must be respected and obeyed (Rigveda, I. 69, 1; IX. 7, 5), held chief command in war (Zimmer, *op. cit.*, p. 165) and offered sacrifice for the tribe at critical moments, as before a battle; id., pp. 165-6.

<sup>4</sup> Krauss, *op. cit.*, p. 25.

<sup>5</sup> Krauss, *op. cit.*, p. 27. These gifts were afterward fixed by law, and other sources of income added. The Germans did not pay their chief fixed tributes, but free gifts; Tacitus, *Germania*, XV. So the Hindoos; Rigveda, X. 173. This is true also of the Homeric Greeks, as will appear hereafter. As among the Slavs, so among the Germans and Hindoos, voluntary gifts generally developed to fixed tribute; Zimmer, *Altindisches Leben*, p. 166.

<sup>6</sup> This is indicated partly by their character, partly by their names and finally by the fact of development, clearly demonstrated, from family to tribe. As to names, cf. *e.g.*, župan, already discussed. In the Croatian Chronicle, the entire state is called *didina* ("grandfather's estate"); Krauss, *op. cit.*, p. 24. The ancient Hindoo monarchy developed from rule of the father; Zimmer, *op. cit.*, p. 162. So of the Romans; Mommsen, *History of Rome*, I. pp. 96-7.

mon blood, worship, and property, though comparatively faint, is yet vital.<sup>1</sup>

Kindred tribes sometimes united for temporary objects. In this case the king of the most powerful tribe is regarded as the king of the confederacy.<sup>2</sup> Such a leader is not to be compared with the king of a state of the more developed type, but stands among his fellow tribe-kings as *primus inter pares*.<sup>3</sup> This is the highest political development attained by the Aryans before the separation of the races, and by most of the South-Slavonic tribes down to the present time.<sup>4</sup>

We have now discussed the South-Slavonic family with sufficient detail for our present purposes, and have pointed out those modifications which it has undergone from early Aryan times. Making allowance for these remarkably few and slight modifications, we may conveniently term it the "Early Aryan family," and may regard it as the second stage in the development of the household on Aryan ground. We have traced also the growth of family to tribe as it is now actually taking place among the South-Slavonians, and as it

<sup>1</sup> Christianity has obscured the ancient religion. At present the common property of the tribe consists mostly of forest and pasture lands; Krauss, *op. cit.*, pp. 62-3. The tribe formerly had the right to decide (through its chief) whether a stranger should be admitted to any one of its component *bratstva* and to bring into the common property the real estate of an extinct Community; Krauss, *op. cit.*, p. 29.

<sup>2</sup> No permanent union of tribes in Aryan times was effected. For ancient Germans and Vedic Hindoos, see Zimmer, *Altindisches Leben*, p. 158. The Homeric kings were, in the main, tribe-kings as will appear from ch. III. of this treatise. For the South-Slavonian tribes, see Krauss, *Sitte und Brauch der Südslaven*, pp. 2, 15-31, 57-63.

<sup>3</sup> Krauss, *op. cit.*, p. 21.

<sup>4</sup> Schrader, *Sprachvergleichung und Urgeschichte*, pp. 583-4, is of the opinion that the kingship (of the state, permanent union of the tribes) developed in connection with the migration of the races, and that the South-Slavonians had no opportunity to advance to this conception, since they remained nearest to the primitive home of the Aryan race.

undoubtedly did take place in early times in all the branches of the Aryan race.<sup>1</sup> The organization and institutions of the early Aryan family underwent modifications in certain directions before the period of migration. Before the close of the early Aryan stage there had developed through the House-community a family with strictly defined limits, whose members were bound together by the tie of blood for the fulfilment of mutual duties and obligations. This family consisted of all the descendants — through the male line — of the same great-grandparents. From it were separated the illegitimate child, the outcast, the emancipated son, the daughter given out in marriage; to it were admitted the adopted son and the wife who came from another family. Thus, marriage dissolved the kinship of the bride with the family of her birth and brought her — but not her father's relatives — into kinship with her husband's household. In the course of time, however, a kinship was developed between households connected by marriage, the wife was no longer cut off from her kinsmen in blood, her children came to be regarded as belonging in a certain sense to both families, and the two families — now cognate in relationship — began to overlap each other, like two intersecting circles. This group of cognate relationship began probably before the separation of the races but was not completed till long afterwards.<sup>2</sup> Closely connected with the widening of kinship is the elevation of woman and of the ideal of home life. The noble sentiment and high moral tone of the

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<sup>1</sup> Cf. Zimmer, *Altindisches Leben*, pp. 159–60.

<sup>2</sup> Schrader, *op. cit.*, p. 550, grants the possibility of placing the beginning of this development in Aryan times. His tendency is to place the beginnings of human improvement as late as possible. For the organization of the family in its wider sense (the *Anchisteis*), see Delbrück, *Die indogermanischen Verwandtschaftsnamen*, p. 591. It may be well here to present a few of the facts which indicate a widening of the idea of kinship:

1. As to the Slavs: "The Polians showed much respect for their parents and their relations, and to their daughters-in-law, fathers-in-law, and brothers-in-law." McLennan, *Patriarchal Theory*, p. 76. The right of private revenge was limited by the code of Jaroslav, 1017 A.D., to "the brother, the son, the father, the brother's

latter as portrayed in Homer<sup>1</sup> and the Vedas<sup>2</sup> lead us to suspect that a considerable improvement along this line had been made on Aryan ground.<sup>3</sup> At the same time there took place a weakening of the father's *potestas*<sup>4</sup> and a development of the separate family.<sup>5</sup> This conduced to the growth of individuality in the household and to a close union in helpfulness and affection.<sup>6</sup>

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son, and the sister's son," id., p. 85. These facts prove the absence of strict agnation among the Slavs.

2. As to the Germans and Hindoos: we have the authority of Tacitus (Germania, XX.) for the fact that a sister's sons were as highly esteemed by their uncle as by their father, and that this tie was even more sacred and binding than that between father and son. Delbrück, *op. cit.*, p. 589, observes that this bond is merely one of kind feeling ("*gemüthlich*"), since the inheritance follows the male line. The existence of this kind feeling, however, and the fact that maternal uncles stand next in succession after brothers and paternal uncles prove that strict agnation did not exist among the Germans at this time. Yet it is not a survival of *Mutterrecht*, but a development from agnation. In India, the history of this change may be traced: in ancient India the father's brother was respected more than the mother's brother; but in the middle period of her history ("*im indischen Mittelalter*") the mother's brother had crowded the father's brother from his place; Delbrück, *op. cit.*, pp. 589, 586-8.

<sup>1</sup> Cf. Od. IV., VI.; also the meeting of Hector and Andromache in Iliad VI.

<sup>2</sup> Zimmer, *Altindisches Leben*, p. 316.

<sup>3</sup> For the Slavonians: "Instead of being in perpetual tutelage, Olga (a widow) was her son's guardian and regent of the kingdom with all the powers of a sovereign"; McLennan, *Patriarchal Theory*, p. 79. Several similar cases occur in Homeric Greece. Indeed, it appears that the perpetual tutelage of woman belongs to the Romans alone.

<sup>4</sup> The Hindoos (Manu, VIII. 299-300), Greeks, Germans (McLennan, *op. cit.*, p. 252 ff) and South-Slavonians (Krauss, *Sitte und Brauch der Südslaven*, p. 79) knew nothing of the *patria potestas* of the Roman type. It is likely here that an early weakening took place.

<sup>5</sup> In Aryan times, the son's family remained in close connection with the father's family—generally a local nearness; Delbrück, *op. cit.*, p. 590. The father and son had property together, although living in separate houses. Among the ancient Hindoos, Greeks, and Romans, the "joint family" had become exceptional; Schrader, *Sprachvergleichung und Urgeschichte*, pp. 569-70.

<sup>6</sup> The son should obey his father and be like-minded with his mother; the wife should speak to her husband in honey-sweet words of friendship; Atharva-Veda, III. 30, 2. Brother should not hate brother, nor sister, sister; id. 3. The father is master, but all should render willing obedience; Zimmer, *op. cit.*, p. 316. The

Progress in the directions above indicated was materially aided by the development in the early Aryan family of the idea of divine law. This idea was a product of Aryan religion, —more particularly, of ancestor-worship<sup>1</sup> and hearth-worship. These two forms, if not identical, are similar in character, and may be designated by the one term, house-worship.<sup>2</sup> The general effect of this worship was to make of the house a temple, to promote respect for parents, to enhance the value of women and children, whence came greater regard for their well-being, to add the tie of religion to that of blood, to render sacred the duties and obligations of

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house has now become the "protected place" (kuća) among the South-Slavonians; Krauss, *op. cit.*, pp. 72-3.

<sup>1</sup> Schrader, *Sprachvergleichung und Urgeschichte*, pp. 613-5, is of the opinion that ancestor-worship arose after the separation of the races; yet there are substantial reasons for placing it earlier. Relics of ancestor-worship are found among nearly if not quite all of the Aryan races; Hearn, *Aryan Household*, pp. 45-6, 59-60. Among the Romans it was so deeply seated in the earliest times as to lead us to believe that ages had elapsed since its origin. Among the Vedic Hindoos, the fathers (*pitaras*) dwell with the gods and receive almost divine honors; Zimmer, *Altindisches Leben*, p. 413. They are often called on for protection, and are worshiped with offerings and libations; *Rigveda*, X. 15; Zimmer, *loc. cit.* The life of the Vedic Hindoos does not appear to be far removed from that of the common Aryans. For ancestor-worship in primitive Greece, see Packard, *Studies in Greek Thought*, p. 35, and J. H. Wright, in his review of the same, *Am. Journ. of Phil.* VIII. p. 88, n. 1. "On the strength of evidence from the grave-monuments of Peloponnesus and of Attica lately made available, the word '*possibly*' should be erased from the statement that the primal impulse to worship produced among the ancestors of the Greeks '*possibly* a worship of the dead.' This worship, of which these monuments are the record, could hardly have sprung up on the soil of Greece." Rohde (*Psyche*), from a study of these monuments and of Homer and Hesiod, has now established the fact of ancestor-worship for primitive Greece beyond a doubt. Schrader is therefore wrong in regarding it as a development later than Homer. For ancestor-worship among the primitive Germans, see Rohde, *op. cit.*, pp. 31-2; among the South-Slavonians, Krauss, *op. cit.*, pp. 51 ff. It is likely that this worship existed in a crude form from the most primitive Aryan times, but did not till long after become a power for the moral education of society.

<sup>2</sup> The ancestor was never worshiped on an altar (*βωμός*, such as is used for sacrificing to the gods), but on a hearth (*εσχάρα*); Pollux, I. 8; Rohde, *Psyche*, p. 33 and n. 2. This shows the close connection between ancestor-worship and house-worship.

all within the consecrated circle of the family. The idea of divine law did not become sufficiently prominent to influence society before the close of the Early Aryan stage of history. Two periods may be thus distinguished: the first is the *Rta* period (or period of natural law); the second, the *Dharma* period (or period of divine law).<sup>1</sup> The first period includes the two stages in the history of the Aryan family above set forth, *viz.*, the Primitive Aryan and the Early Aryan. The *Dharma* period includes but one stage of family history, *viz.*, the Later Aryan,<sup>2</sup> to be considered in the following chapter. As to when the later Aryan period begins there is much difference of opinion. In view of all the facts, it is well to place its beginning not long before the separation of the races, while its full development was attained centuries afterwards. Moreover, it is only for certain of the Aryan races, notably for the Hindoos, Greeks and Romans, that our information warrants us in asserting a full development of the idea of divine law—to the extent that it colored and moulded all the legal and political institutions of these races.<sup>3</sup>

In the following chapter the Later Aryan family will be presented with reference especially to the Hindoos, Greeks, Romans and Slavonians. The object of this is to throw as much light as possible upon the early Grecian family and gens,

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<sup>1</sup> Further explanation of these terms will be given in the following chapter.

<sup>2</sup> I have applied the terms "*Primitive*," "*Early*," and "*Later*," with the purpose merely of indicating as definitely as possible the lines of progress which the family appears to have followed. Families of the *Primitive* type undoubtedly existed among the less favored Aryans even after the separation of the races. In like manner, the *Early* type has continued to the present day, *e.g.*, among the South-Slavonians. The development of a new form of society did not exclude the old, but the new and the old continued thereafter side by side. At the time of partition, there existed two principal types of the family, thus distinguishing two grades of society. The *Early* type prevailed among the common classes, while the *Later* family existed only among the nobility.

<sup>3</sup> The idea of divine law belonged undoubtedly to the common Aryan stock and was the parent of common Aryan institutions, *e.g.*, that of blood-vengeance. Among the South-Slavonians it certainly moulded, if it did not create, the customs of marriage, adoption, etc.

to bring to the solution of problems arising in the study of these as many known factors as possible.

House-worship developed within the family. The common *sacra* of the gens—a mere enlargement of the family—need for their origin no special explanation. The same may, indeed, be said of phratry and tribe, where these have developed organically from the family. But as we ascend the gentile scale, we observe a growing tendency to create factitious groups. Neighboring gentes belonging to the same tribe united to form a phratry, whether on the basis of a similarity of religious rites, readily assumed as indicative of a relationship in blood, or whether on the basis of local contiguity and an identity of interest. Members of this larger group in the latter case as in the former regarded one another as kinsmen (as the term *φρατρία*, *bratstvo*, indicates). Finally the tribe yielded to the prevailing tendency, and received in its legal, social, and political institutions the impression of the divine law. Beyond this the Aryans, before the separation of the races, did not advance.<sup>1</sup> We shall trace on Greek soil the development of the city, and shall find that to the very end of their classic history the Greeks were in bondage to two ideas: first, that the city is the ultimate limit of political unity, and second, that the city is a family, into the enjoyment of whose privileges none may enter except by birth or adoption.

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<sup>1</sup> Leist, *Graeco-italische Rechtsgeschichte*, p. 105.

## CHAPTER II.

### THE ARYAN GENS.

#### (a) *The Aryan Household.*

The Aryan household, in its wider signification, was composed of the cognate parents (father and mother), the legitimate sons (or adopted son), the grandsons and great-grandsons with the lawful wives of all these, the unmarried daughters, sons' daughters and grandsons' daughters,—a brotherless daughter being, in all cases, esteemed equal to a son.<sup>1</sup> It included also property<sup>2</sup> and slaves.<sup>3</sup> It was customary for the son at marriage to depart from the paternal roof and from the father's authority and to enter a new dwelling built for his use.<sup>4</sup> He still belonged by agnation to the house of his father and was liable to all the obligations of its members. Although he was from the time of marriage the possessor of a hearth and a free member of the gens, his house did not become fully independent in religious and property matters till the death of the father<sup>5</sup> and the final division of the property.<sup>6</sup> When it was

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<sup>1</sup> That the household included definitely these persons will appear in the course of this chapter. Cf. Mommsen, *History of Rome*, I. ch. V. p. 88. For the four generations, see Isaeus, VIII. 32; *Law of Gortyn*, V; *Baudhâya*, II. 5, 10, 1.

<sup>2</sup> "Property is a part of the household"; Aristotle, *Politics*, I. 4, 1 (p. 1253 b, 23).

<sup>3</sup> "A complete household consists of slaves and freemen"; id. I. 3, 1.

<sup>4</sup> Leist, *Altarisches Jus Gentium*, p. 34; *Graeco-italische Rechtsgeschichte*, p. 65; cf. n. 1 of following page. Some exceptions occur. Among the South-Slavonians, the joint family, in the form of the House-community, is the rule. Cf., however, Krauss, *Sitte und Brauch der Südslaven*, p. 114.

<sup>5</sup> "He who makes a Çraddha-offering while his father is alive, must offer it to those persons to whom his father offers (his Çraddha)." *Institutes of Vishnu*, LXXV. 1. Thus the son has not his own ancestral gods while the father lives, but must worship the gods of the latter.

<sup>6</sup> "When he has paid, according to the law, his debts to the great sages, to the manes, and to the gods, let him make over everything to his son and dwell (in his



thought advantageous for the property to continue undivided, the married son, often living apart, must have had some voice in its management;<sup>1</sup> though he naturally listened with respect to the advice of his father.<sup>2</sup>

The Aryan household was a corporation with religious, moral and material aims, united under the householder and his wife.<sup>3</sup> As a corporation, it enjoyed the ownership, in a restricted sense, of property. As to real estate, it held in permanent possession only the lot on which the house stood.<sup>4</sup> This could not be alienated, and passed ultimately to the gens in failure of heirs within the house and cognate family.<sup>5</sup> Besides this, it held a share (lot, *loos*, *sors*, *κλήρος*, *alod*) of the common gentile land,<sup>6</sup> which was re-distributed periodically, with rights to pasturage, timber, etc., on the unoccupied, or waste lands of the village. There was enough land to supply all these wants

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house), not caring for any worldly concerns"; Manu, IV. 257; also, Âpastamba, II. 6, 13. 13-14. It is likely that this custom of settling the estate before the death of the householder belonged to the early Greeks, and that Laertes followed it in making over his estate and kingdom to Odysseus and in dwelling apart in the country; cf. also Demosthenes, XLIII. 19; XLVII. 34-5. The Cretan householder might settle his estate during his life-time, but could not be forced to it; Law of Gortyn, IV. 23 ff.

<sup>1</sup> The father may spend as he chooses only self-acquired property, (Vishnu, XVII. 1), "but in regard to wealth inherited of the paternal grandfather, the ownership of the father and son is equal"; Institutes of Vishnu, XVII. 2. That this holds also for the Greeks is shown by the Law of Gortyn. Such rights were undoubtedly insisted upon even during the life-time of the father. The father and son held property in common, though living in separate houses; Delbrück, *Die indogermanischen Verwandtschaftsnamen*, p. 568.

<sup>2</sup> Krauss, *Sitte und Brauch der Südslaven*, p. 84, "when an elder speaks, a younger man must keep silent" — *Slavic proverb*.

<sup>3</sup> Leist, *Altarisches Jus Gentium*, p. 74; cf. Zimmer, *Altindisches Leben*, pp. 305, 317-18.

<sup>4</sup> Hearn, *Aryan Household*, p. 219. Cf. Tighe, *the Development of the Roman Constitution*, p. 86.

<sup>5</sup> Âpastamba, II. 6, 14, 2; with Manu, IX. 187; Baudhâyana, I. 5, 11, 11-12. In Athens, before Solon, "the goods and the house must remain in the family of the deceased person"; Plutarch, Solon, 21. Inherited real estate was also inalienable in Laconia; Leist, *Graeco-italische Rechtsgeschichte*, p. 113; and in Crete; Law of Gortyn.

<sup>6</sup> Hearn, *Aryan Household*, p. 220.

and to afford new dwelling lots and arable κλῆροι to the newly married.<sup>1</sup> Its members were bound together by the ties of kinship and an exclusive religious service for the fulfilment of mutual duties of help, defense and redress of injuries,<sup>2</sup> and for the maintenance of the household and its worship.<sup>3</sup> The householder was not proprietor; nor are we to think of him as managing the house in his own interest.<sup>4</sup> The property belonged first to the household, secondly (in failure of heirs within the family) to the near kin, and ultimately to the gens.<sup>5</sup>

Two ideas lay at the foundation of the Aryan conception of the world, corresponding to two periods of Aryan history.<sup>6</sup> The first is the idea of natural law (Skt. *Rta*, Lat. *naturalis ratio*, Gk. κόσμος, φύσις). This, mankind learned from the revolutions of sun and stars, from the succession of the seasons, from the unchanging movements of nature. The conception thus gained was transferred to human modes of activity. The sexes in marriage were subject to the *naturalis ratio*, as well as the continuance of the race through successive

<sup>1</sup> Tacitus, *Germania*, ch. 26; Leist, *Graec. Rechtsg.* p. 103.

<sup>2</sup> Od. III. 307; XXIV. 432.

<sup>3</sup> Leist, *Graeco-italische Rechtsgeschichte*, p. 27.

<sup>4</sup> "The government of a wife and children and of a household, . . . is exercised in the first instance for the good of the governed"; Arist. *Politics*, III. 6, 4 (p. 1278 b, 38 ff.). It appears also from n. 1, p. 28. Compare Gautama, V. 25, where the householder is regarded as the one who feeds the family. He must eat nothing till the rest have enough; Institutes of Vishnu, LXVII. 41-3. Cf. also Krauss, *Sitte und Brauch der Südslaven*, p. 79.

<sup>5</sup> See n. 5, p. 28. The householder could not give away the hereditary estate; Vishnu, XVII. 1-2; or make a will. That the gens had the ultimate right to the property, appears from n. 5, p. 28, and also from the fact that the villager could not sell his land to a stranger; Hearn, *Aryan Household*, pp. 228, 229; Krauss, *op. cit.*, p. 40.

<sup>6</sup> I do not assert that there was no religion in the earlier period, but that a far higher form of religion entered with the second period. The latter begins with the change from nomadic to settled life, the founding of the sacred hearth, the development of that phase of ancestor-worship which we find existing among the later Aryans. We cannot doubt that the principles of ancestor-worship were at war with many usages, such as marriage by capture, which arose in an earlier and less civilized age; see Leist, *Altarisches Jus Gentium*, pp. 76 ff.

generations. The relations of parents to children with their reciprocal obligations and privileges, — the protection and support which the father, as the stronger, offered, the kind care of the mother for her infants, the reverence and affection with which the children requited these services, the love of youth and maiden, leading to marriage, — all these rested, in the *Rta* period, on the one foundation of natural law.<sup>1</sup>

While in the second period this basis continued as the real foundation of human institutions, another element entered, which gave to these same institutions a firmer footing, an absolutely new and unique character and a marvelous tenacity of life. This was the divine law (Skt. *Dharma*; Lat. *Fas*; Gk. *Themis*).<sup>2</sup> A belief in the existence of the soul arises probably from the notion of a second self found among early races, *e. g.*, the Homeric Greeks.<sup>3</sup> With them the body is the principal self,<sup>4</sup> but along with it is the soul, or second self, a mere shadow<sup>5</sup> or image<sup>6</sup> of the body. It was this which was active in dreams,<sup>7</sup> — while the real self was unconscious, it communed with the gods and with other souls, and learned of the future.<sup>8</sup> Thus the Homeric Greeks regarded whatever appears or happens in dreams as real objects and occurrences and not as products of the imagination.<sup>9</sup> Further-

<sup>1</sup> Isaeus, II. 18; Dem. XLIV. 32.

<sup>2</sup> The *ῥta* and *dharma* ideas are thoroughly discussed in Leist, *Graeco-italische Rechtsgeschichte*, pp. 187 ff. I regard the "*divine law*" as entering at the time when religion becomes a factor in the moral improvement of the race. Division into periods here, as elsewhere, is merely a convenience of thought. On the persistency of ancestor-worship and of everything which it colors, see Hearn, *Aryan Household*, p. 56.

<sup>3</sup> Rohde, *Psyche*, p. 7; J. Lippert, *Die Religionen der europäischen Culturvölker in ihrem geschichtlichen Ursprunge*, pp. 309 ff. (on the Greek religion); pp. 1 ff. (on the primitive conception of the soul).

<sup>4</sup> *Iliad*, I. 3-4.

<sup>5</sup> *Od.* X. 495; XI. 207.

<sup>6</sup> *Il.* XXIII. 100.

<sup>7</sup> Rohde, *Psyche*, pp. 7, 42.

<sup>8</sup> Pindar, *Frag.* 131.

<sup>9</sup> Rohde, *Psyche*, p. 7.

more, they regarded death as closely akin to sleep.<sup>1</sup> In the earliest times it was supposed that even after death the soul retained a certain connection with the body, and remaining in general near it,<sup>2</sup> exercised a potent influence upon the living. As the soul had the same size and form as the body,<sup>3</sup> so its nature was patterned after that of the living man, — possessing the same passions and appetites, yet endowed with greater power for good or evil.<sup>4</sup> To avert the easily excited anger<sup>5</sup> of disembodied souls, to keep them gracious and beneficent to the living, it was necessary to propitiate them with gifts and ceremonies.<sup>6</sup>

Care for the souls of deceased ancestors was the chief impulse to family religion, which affected all existing modes of thought and action, and out of which the social, legal and political ideas and institutions of the Aryans (especially of the Hindoos, Greeks and Romans) developed.<sup>7</sup>

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<sup>1</sup> "A deep sleep fell upon his eyelids, a sound sleep, very sweet, and next akin to death." Od. XIII. 79-80. The primitive folk-psychology, unable to conceive of *discontinuance of being*, inasmuch as it had never isolated and thrown into objectivity the conception *being*, saw in the phenomena of sleep and dreams, swoons and death only the temporary or permanent separation of the shadowy, second self, or soul, from the body.

<sup>2</sup> The soul remains with the body when the latter is buried in due form with all its choicest treasures; Rohde, *Psyche*, p. 32. Its influence upon the living is indicated by the worship paid to it. The object of burning the body, wherever this custom existed, was to set the spirit of the deceased free that it might depart from earth; for the Greeks, Od. XI. 219 ff; for the Romans, Servius ad Verg. Aen. III. 68; for the Hindoos, Rigveda, X. 16. 2, 9; X. 14, 8; Zimmer, *Altindisches Leben*, pp. 402 f., 409; Rohde, *op. cit.*, pp. 26-30.

<sup>3</sup> Rohde, *op. cit.*, p. 3.

<sup>4</sup> This is the case where the primitive idea has not become weakened, as in Homeric Greece.

<sup>5</sup> Schol. ad Aristoph. Aves, 1490; Athenaeus, XI. 461 c; IV. 149 c; Rohde, *op. cit.*, pp. 225-6; in Manu, III. 192, "Free from anger," must accordingly be a euphemistic expression.

<sup>6</sup> Plato, Rep. IV. 427B; Rohde, *loc. cit.*

<sup>7</sup> Souls resided also in objects (*fetiches*) and animals (*totems*) as well as in human bodies. Nature-worship was not something distinct from ancestor-worship, but arose from one and the same impulse with it, — the propitiation of spirits that had taken up their residence in natural objects. The latter were not distinguished from human bodies. Both had life, — personal life.

The leading fact in ancestor-worship, around which all others centre, is as follows. It was essential to the repose and happiness of the deceased that he be buried in due form<sup>1</sup> and worshiped with becoming rites by his living male descendants begotten in lawful wedlock and properly initiated into the house-worship.<sup>2</sup> This service consisted largely in offerings of food and water accompanied with the recitation of appropriate prayers.<sup>3</sup> In case these offerings were neglected, the deceased person was tormented with hunger and thirst, and became a malevolent spirit visiting those who had neglected him with the anger of the gods.<sup>4</sup> Those, on the other hand, who performed their religious duties to the dead in the lawful manner, experienced the greatest prosperity on earth in moral and material things, and after death were rewarded with eternal

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<sup>1</sup> When no relative was present, the burial or burning might be performed by other persons. Accordingly Elpenor addresses Odysseus, "Leave me not unwept and unburned as thou goest hence, nor turn thy back upon me, lest haply I bring on thee the anger of the gods. Nay, burn me there with mine armor, all that is mine, and pile me a barrow on the shore of the gray sea, the grave of a luckless man that even men unborn may hear my story"; Od. XI. 72-6.

<sup>2</sup> "The legitimate son of the body alone shall be the owner of the paternal estate"; Manu, IX. 163. "And he who inherits the wealth presents the funeral oblations (to the deceased)"; Institutes of Vishnu, XV. 40. "One must not employ an (uninitiated child) to perform oblations in the fire"; Gautama, II. 4, 18-19; Isaeus, VI. 51; VIII. 22; Dem. LVII. 70; XLIII. 51; Rohde, *Psyche*, p. 229.

<sup>3</sup> *e.g.*, "Come near, O ye manes (conduct them all here), O *Agni*. May my ancestors come near. This is your (share), O ye manes"; Institutes of Vishnu, LXXIII. 12; Isaeus, VI. 51.

<sup>4</sup> "Till the *Sapinda-karana* (offering after the days of fasting) has been performed, the dead man remains a disembodied spirit (and is afflicted with hunger and thirst). Give rice and a jar of water to the man who has passed into the abode of disembodied spirits"; Institutes of Vishnu, XX. 33. Such a one finds no rest; id. 32; Vergil, *Aeneid*, VI. 337 ff., 374-6; Lucian *de Luctu*, 9; Od. XI. 72-6, quoted above. This passage from the *Odyssey* proves that the Homeric Greeks regarded the soul before burning of body, as powerful in its influence upon the living. While it could not personally work evil it could bring upon the living the anger of the gods. Rohde, *op. cit.*, has not given this passage due consideration.

bliss.<sup>1</sup> All this the manes gave in exchange for the equivalent benefit which they themselves received.<sup>2</sup> A definite set of ancestors, — father, grandfather and great-grandfather of the performer, — are recipients of this worship.<sup>3</sup> The ascendants beyond the great-grandfather are satisfied with mere water,<sup>4</sup> and the duties and obligations of these to the living descendants are correspondingly weak. The necessity of satisfying and pleasing the deceased led to the development of the rites, or fixed modes of worship, and to that organization of the household which should give it the greatest possible stability and permanence, and the utmost efficiency in the fulfilment of its religious functions.<sup>5</sup>

The central idea in the organization of the house was that of the hearth. In the *Rta* period its use was purely material, its eternal nature arising from the difficulty of rekindling.<sup>6</sup> To the material element originally existing were added moral and spiritual elements in the *Dharma* period. Henceforth, it served not merely to cook the food on which the family subsisted, but

<sup>1</sup> "Even water offered to the manes with faith . . . produces endless (bliss)"; Manu, III. 202. "May we have much to give to the needy"; id. 259. "May (our knowledge of) the Vedas increase. May faith not forsake us"; id.; also, Āpastamba, II. 7. 16. 12; Vasishtha, XI. 41-2; Baudhāyana, II. 8. 14. 1.

<sup>2</sup> "Those (sons) who live fulfilling the rites taught (in the Veda) increase the fame and heavenly bliss of their ancestors": Āpastamba, II. 9. 24. 3; also 4. The benefits are declared to be reciprocal in Vishnu, XX. 36. Cf. Od. III. 58-9, and see especially Aeschylus, Choeph. 483 ff.; Cicero, *de Natura Deorum*, I. 116.

<sup>3</sup> "The father and the grandfather, likewise the great-grandfather, beset a descendant who is born to them, just as birds (fly to) a fig-tree; (saying) he will offer us funeral repasts with honey and meat, with vegetables, and with messes made of milk, both in the rainy season and under the constellation Maghâh"; Vasishtha, XI. 39-40. See also Manu, IX. 186; Baudhāyana, II. 5. 10. 1.

<sup>4</sup> The Samānodakas, as the term indicates, are those allied through offerings of water. They were descendants of the ancestors beyond the great-grandfather as far as the family name extended and a relationship could be traced; Manu, V. 60.

<sup>5</sup> Cf. Rohde, *Psyche*, p. 231.

<sup>6</sup> "And as when a man hath hidden away a brand in the black embers at an upland farm, one that hath no neighbors nigh, and so saveth the seed of fire, that he may not have to seek a light elsewhere, even so did Odysseus cover himself with leaves"; Od. V. 488-491.

became also the connecting link between the present generation and the past, a medium of communication between the family and its ancestral gods.<sup>1</sup> It was, in short, the family altar and the visible expression of the *jus divinum* within the household. The hearth itself came to be regarded as a deity (*Hestia, Vesta, Agni = Ignis*), whose function was to receive the offerings presented and transmit them to the higher powers.<sup>2</sup>

The fire must be kept burning always, fed with pure fuel of wood or oil.<sup>3</sup> It was a symbol of the immortal nature of the family and its continual dependence on the gods. By the pure fuel was signified the moral and spiritual holiness of the fire<sup>4</sup> and of the gods, whose altar it was.<sup>5</sup> No unclean act could be performed in its presence.<sup>6</sup> No polluted person dared approach it,<sup>7</sup> except in certain cases and with a view to purification.<sup>8</sup> An oath sworn by the hearth was the most inviolable of all pledges.<sup>9</sup> The suppliant who reaches its sacred presence and seats him-

<sup>1</sup> For performing sacrifices and cooking food; Manu, III. 67; Gautama, V. 7-8. Worship of sacred fire brings prosperity; Manu, III. 76. It is a crime not to kindle; Institutes of Vishnu, XXXVII. 28. Carries offerings to the gods; Vasishtha, XIV. 18.

<sup>2</sup> "To *Agni*, who carries the offerings to the manes, who causes sacrifices to be well performed, Svaha"; Baudhâyana, II. 8, 14, 7.

<sup>3</sup> "He shall not place fuel on the fire without having sprinkled it (with water)"; Âpastamba, I. 5, 15, 12; Baudhâyana, I. 7, 15, 20; II. 4, 7, 4; Gautama, II. 8; XXV. 10; Institutes of Vishnu, LXVI.

<sup>4</sup> It is everywhere called the "holy fire" or the "sacred fire." In Greece, the belief in the purifying power of fire is thought to be later than Homer; Rohde, *Psyche*, p. 29. We may with reason, however, suppose that the belief existed in Aryan times but in Homer fell into the background along with ancestor-worship.

<sup>5</sup> "For the gods are desirous of purity and (themselves) pure"; Baudhâyana, I. 6, 13, 2. "The gods enjoy a pure sacrifice only"; id. I. 1. "The manes are primeval deities, free from anger, careful of purity, ever chaste, averse from strife, and endowed with great virtues"; Manu, III. 192.

<sup>6</sup> Fustel de Coulanges, *Ancient City*, p. 37; Hesiod, *Works and Days*, 731.

<sup>7</sup> The sacrificer and his wife must put on stainless garments before beginning the rites; Baudhâyana, I. 6, 13, 4-5. Alcestis bathed, put on fresh garments and adorned herself before approaching the fire; Euripides, *Alcestis*, 157 ff.

<sup>8</sup> Leist, *Altarisches Jus Gentium*, p. 86.

<sup>9</sup> "Zeus be my witness first, of gods the highest and best, and the hearth of noble Odysseus whereunto I am come"; Od. XIX. 303-4; XVII. 155-6.

self in its ashes is placed thereby under the protection of the household gods,<sup>1</sup> and its members are under religious obligations to entertain him as a guest and to shield him from pursuers.<sup>2</sup> If his hands are stained with blood from involuntary or justifiable homicide, he becomes clean through contact with the fire and the priestly service of the householder, though not in the eyes of his pursuers.<sup>3</sup>

The kindling of the fire symbolized the founding of a new household. This always occurred at marriage;<sup>4</sup> and when the son remained at home, taking the place of the deceased father, he re-kindled his father's domestic fire, which had been allowed to die with its possessor.<sup>5</sup> On the death of the mother, also, it was extinguished, and re-kindled by the householder at his second marriage.<sup>6</sup> Thus the extinction of the fire was regarded as a great calamity. It signified nothing less than the temporary or permanent dissolution of the family. The mother who allowed it to die out through neglect was in India punished by fasting, while the father who extinguished it must perform a heavy penance<sup>7</sup> and might even suffer loss of caste.<sup>8</sup>

The hearth, in its character as an altar, made of the house

<sup>1</sup> Represented by Zeus *ἑστίας* "Hearth-sharing Zeus"; Aeschylus, *Agamemnon*, 703:

"Exacting vengeance for the scorn

Done to the table and to Zeus hearth-sharing." (Kennedy.)

<sup>2</sup> *Od.* VII. 153 ff.; Thucydides, I. 136; Leist, *Altarisches Jus Gentium*, pp. 404-6, with references to Aeschylus.

<sup>3</sup> Leist, *op. cit.*, p. 84. The slayer sits silent on the hearth, sticks his sword in the ground, covers his face with his hands. Then the house-holder sacrifices a sucking pig, pours blood on the suppliant's hands, and prays to Zeus *καθάρσιος*. Then the *λύματα* (beast and blood) are removed, and the slain is appeased with an offering; *Hdt.* I. 35; Apollonius Rhodius, IV. 693 ff.; Aeschylus, *Choeph.* 36 ff.

<sup>4</sup> "The (sacred) fire (must be kindled) on his marriage or on the division of the family estate. The domestic (ceremonies must be performed) with the aid of the fire"; Gautama, V. 7-8; Manu, III. 67; Vasishtha, VIII. 3; Baudhâya, II. 2, 4, 22.

<sup>5</sup> Leist, *op. cit.*, pp. 70-1.

<sup>6</sup> Manu, V. 167-8.

<sup>7</sup> Vasishtha, XXI. 27. Cf. I. 18.

<sup>8</sup> *Id.* I. 23.



a temple. In the house, archaic man found security and peace. None of his fellow-citizens dared to enter it in the absence of the master,<sup>1</sup> while the officers of the government must lay aside their arms on entering to search for stolen goods.<sup>2</sup> No dearer or more sacred spot could anywhere be found.<sup>3</sup> As the religious center of the family, the hearth is the source of the householder's power.<sup>4</sup> Nature placed the father at the head of the family for its support and protection; the divine law made him subordinate to the household gods represented by the hearth<sup>5</sup>—as their priest and prophet. As priest he made offerings daily to the hearth,<sup>6</sup> and as prophet he expounded the divine will to the family. The hearth, moreover, gave to its possessor a place in the assembly of villagers, and was the source of his dignity and influence in the state.<sup>7</sup> The

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<sup>1</sup> It was an insult to an Athenian gentleman that a man should enter his house during his absence; [Dem.] XLVII. 53, 60, 81. Among the South-Slavonians it was called *Kuća*, "the protected place"; Krauss, *Sitte und Brauch der Süd-slaven*, pp. 72-3.

<sup>2</sup> This custom belonged to the ancient Germans, Slavs, Greeks and Italians; Leist, *Graeco-italische Rechtsgeschichte*, p. 246 ff.

<sup>3</sup> "What is more sacred than the house of every citizen? What is more guarded by every sentiment of religion? Here are his altars, here his hearth, here the gods of his household; here are contained his sacred things, his worship, his ritual; this is so holy a refuge to all that no person may thence be dragged away"; Cicero, *pro Domo*, ch. 41, quoted by Hearn, *Aryan Household*, p. 357.

<sup>4</sup> Thus his feeding the fire is a symbol of his holding authority; Aeschylus, *Agamemnon*, 1434-5:

"I ne'er expect to tread the hall of fear  
So long as on my hearth Aegisthus burneth fire."

The gods of the hearth give the power,—

"And now into the domes and homes by altar  
Going, I to the gods first raise the right hand—  
They who far sending, back again have brought me."

Aeschylus, *Agamemnon*, Browning's translation, p. 25. This should be connected with the statements of Aristotle (*Politics*, p. 1322 b, 28) that "rulers derive their honor from the common hearth."

<sup>5</sup> *ἑστία δαίμονια*, Fustel de Coulanges, *Ancient City*, p. 112.

<sup>6</sup> Gautama, V. 7-8.

<sup>7</sup> Leist, *Altarisches Jus Gentium*, pp. 88-9.

duty of replenishing the fire, preparing the meal, and assisting in the religious services devolved upon the house-mother.<sup>1</sup> Thus was she priestess and mistress of the household co-ordinate with her husband.<sup>2</sup> As the daughters assisted in keeping the fire, so they shared in the honor. The vestals at Rome represented the daughters of the king, their duty being to watch over the hearth of the nation, while at Athens it was kept in the Prytaneum by aged widows, the venerable house-mothers of the state.<sup>3</sup>

The first step in the founding of a new household is marriage. During the *Rta* period marriage by capture prevailed among warlike gentes.<sup>4</sup> The captive wives were, of course, taken from another village. Following this form of marriage, and growing out of it, was the form of marriage by purchase. In this case, both parties consented to the marriage, and their relations were those of peace and friendship.<sup>5</sup> This naturally brought about a change in the condition of the wife. In the former case, she was in unconditioned subjection to her husband; in the latter, there must have come in early an understanding as to her treatment after marriage.<sup>6</sup> Thus the change from capture to

<sup>1</sup> "A wife who assists at the kindling of the fires becomes connected with those religious rites of which that (fire-kindling) forms a part"; *Āpastamba*, II. 5, 11, 14, and note id. 12; II. 6, 14, 16-17; *Baudhāyana*, I. 6, 13, 4-5; *Manu*, III. 18; *Institutes of Vishnu*, XXVI. 1-2.

<sup>2</sup> "Both wife and husband have power over (their) common property"; *Āpastamba*, II. 11, 29, 3. "The father and the mother have power to give, to sell, and to abandon their son"; *Vasishtha*, XV. 2; *Baudhāyana*, *Parisishtha*, VII. 5, 3.

<sup>3</sup> Cf. this with Frazer's view in his interesting article on the Prytaneum, etc.; *Journal of Philology*, No. XXVIII. (vol. XIV.) p. 145 ff. Fustel de Coulanges' treatment of the hearth (*Ancient City*, pp. 29-41) is excellent, but he is wrong in supposing that the wife has no power. That the daughter assists appears from *Āçvalāyana*, I. 9, 1, 2.

<sup>4</sup> Schrader, *Sprachvergleichung und Urgeschichte*,<sup>2</sup> pp. 553-4; Dionysius of Halicarnassus, II. 30; Herodotus, I. 146. In this epoch the wife was a slave, and relationship through males only was the rule.

<sup>5</sup> Schrader, *Sprachvergleichung und Urgeschichte*,<sup>2</sup> pp. 553-4, 550; Aristotle, *Politics*, II. 8, 19 (p. 1268 b, 41).

<sup>6</sup> The relations of the wife began at this point of time to be recognized as the husband's relations, and cognate relationship thus came in. As marriage by purchase is Aryan, so is the cognate relationship Aryan at least in its beginnings.

purchase brought, in time, great improvement in the condition of women. The development from exogamy (where this was customary<sup>1</sup>) to endogamy was another advance in their favor: for now, in case of ill-treatment, they could appeal for protection to their kinsmen in blood, and this possibility exerted a restraining influence upon their husbands.<sup>2</sup> Marriage by purchase must also have originated in the *Rta* period.<sup>3</sup> The older custom, however, continued to exist by the side of the newer. We are now to consider the influence of *Themis* upon these two forms. It acted more strongly against the earlier and more barbarous custom, displacing the reality by a mere ceremony.<sup>4</sup> To one who understands the nature of marriage as a ceremony of

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In Homeric Greece, the wife was not in unconditioned subjection to the householder of her husband's family, but in case of mistreatment was avenged by her own father. "Moreover it is hard for me to make heavy restitution to Icarius, as needs I must, if of mine own will I send my mother away. For I shall have evil at his hand, at the hand of her father"; Od. II. 132-4.

<sup>1</sup> *i. e.* among warlike gentes. When marriage by purchase and the still higher forms came in, endogamy was fostered by prudential considerations.

"And choose thy wife from those that round thee dwell,  
Weighing, lest neighbors jeer, thy choice full well."

Hesiod, Works and Days, 700f.

<sup>2</sup> Plutarch, Quaestiones Romanae, 108.

<sup>3</sup> A sufficient proof that these two forms of marriage originated before the *Dharma* period is the fact, to be set forth hereafter, that the *dharma* idea was antagonistic to both forms. For the beautiful family life in early India, see Zimmer, Altindisches Leben, p. 316.

<sup>4</sup> Dionysius of Halicarnassus, II. 30 (quoted by Schrader, Sprachvergleich., etc., p. 553) tells us that marriage *δὲ ἀνδραγάς* once prevailed through all Greece. The Dorians retained survivals of this in their marriage ceremonies; Plutarch, Lycurg., 15; Müller's Dorians, II. p. 298 ff.; Blümner, Griech. Privatalterthümer, p. 272 and n. 8. In India, also, marriage by capture was not unknown in the *Dharma* period. "If they forcibly abduct (a damsel) destroying (her relatives) by strength (of arms), that (is called) *Kṣātra-rite*"; Vasishtha, I. 34 (or *Rakṣātra-rite*; Baudhāyana, I. 11, 20, 8); but this form of marriage was denounced as sinful (Baudh. I. 11, 20, 11) and the bride was released when practicable; Vasishtha, XVII. 73. The custom of carrying the bride across the threshold of her new home may go back to this practice, though Fustel de Coulanges, Ancient City, p. 56 ff., treats it differently. The rape of the Sabine women is a reminiscence of the same practice among the Romans. For survivals among the South-Slavonians, see Krauss, Sitte und Brauch d. Südslaven, pp. 394, 449.

house-worship it seems perfectly intelligible that the capture of wives should be suppressed in the interests of that religion.<sup>1</sup> *Themis* was opposed to marriage by purchase also, since it made the wife a slave, whereas under the divine law she should be free and on a level with her husband.<sup>2</sup> Accordingly the fee was reduced to a merely nominal sum ;—a pair of kine being prescribed by Hindoo usage ;<sup>3</sup> and this was not regarded as a fee, but only a token of kindness and respect for the maiden.<sup>4</sup> Any gift, great or small, should be returned to the giver or to the bride as dowry.<sup>5</sup> But it was impossible to do away entirely with the custom ; hence the attempt to varnish it over with sentiment.

Besides the formal betrothal, there were three acts in the ceremony of marriage. In the first act, the father delivers his daughter into the hand of the bridegroom.<sup>6</sup> The Greek word

<sup>1</sup> Hearn, *Aryan Household*, p. 155 ff.

<sup>2</sup> Marriage by purchase was severely denounced by Hindoo law. "Those wicked men who, seduced by greed, give away their daughters for a fee, who thus sell themselves and commit a great crime, fall (after death) into a dreadful place of punishment. . . . all this is declared to happen, if a fee is taken"; Baudhâyana, I. 11, 21. And again: "It is declared that a female who has been purchased for money is not a wife. She cannot (assist) at sacrifices, offered to gods and manes. . . . She is a slave"; id. 2. Cf. *Vasishtha*, I. 36-8; *Manu*, III. 27-28, 24-25, 31. The father should not take the smallest gratuity; *Manu*, III. 51, 53.

<sup>3</sup> *Institutes of Vishnu*, XXIV. 21. This gift characterized the *Ārsha* marriage.

<sup>4</sup> *Manu*, III. 54.

<sup>5</sup> "It is declared in the Veda that at the time of marriage a gift, for (the fulfilment of) his wishes, should be made by the bridegroom to the father of the bride in order to fulfil the law. 'Therefore he should give a hundred (cows) besides a chariot; that gift he should make bootless (by returning it to the giver).' In reference to those (marriage-rites) the word *sale* (which occurs in some *Smṛtis*) is only used as a metaphorical expression; for the union of husband and wife takes place through the law"; *Āpastamba*, II. 6, 13, 12. Cf. *Vasishtha*, I. 36. This is the hundred kine paid for heiresses in Homeric Greece; *Leist*, *Altarisches Jus Gentium*, pp. 130-1; *Iliad*, XI. 244; IX. 146; *Od.* XI. 282; cf. *Çāñk.* I. 14, 16. That the bride-price (*sedna*) went in Homeric Greece to the daughter as dowry, just as the Veda ordains, is proved by *Od.* I. 276-8: "Let her go back to the hall of that mighty man, her father, and her kinsfolk will furnish a wedding feast and array the gifts of wooing exceeding many, all that should go back with a daughter dearly beloved." Cf. *Od.* II. 196.

<sup>6</sup> *Fustel de Coulanges*, *Ancient City*, p. 56.

*ἐγγύησις* probably applied originally to this ceremony, and signified an actual delivery into the hand, just as it afterwards signified a legal delivery (*ἐκδοῦναι*). Then came the *pompē*, or journey of the bride, seated on an ox-cart, to the house of her husband.<sup>1</sup> Finally occurred the *telos*, or initiation of the bride into the *sacra* of her new home.<sup>2</sup> The signification of these ceremonies is, in brief, the release of the maiden from the power of her father and connection with the *sacra* of his house,<sup>3</sup> and her delivery into the power of her husband<sup>4</sup> and initiation into the worship of his house.<sup>5</sup> Restriction as to the intermarriage of near kin has already been partially considered.<sup>6</sup> In Greece the intermarriage of near kin was per-

<sup>1</sup> Schrader, Sprachvergleichung und Urgeschichte,<sup>2</sup> p. 554; Leist, Graeco-italische Rechtsgeschichte, p. 65.

<sup>2</sup> "In regard to women, the marriage ceremony is (regarded, &c., as their) initiation"; Vishnu, XXII. 32. In Greece the bride was "led in marriage from the paternal hearth"; Blümner, Die griech. Privatalterthümer, pp. 273 n. 1 and 275 n. 1, with references. The bride's mother carried the sacred fire to the new home; id. Among the South-Slavonians, the marriage ceremonies were closely connected with the hearth; Krauss, Sitte und Brauch der Südslaven, pp. 386, 395, 399 f. For the meaning of *ἐγγύησις* above given, see E. Hruza, Beiträge zur Geschichte des griechischen und römischen Familienrechts, Bd. I., reviewed by Otto Müller in Neue Philologische Rundschau, 1892, pp. 327-31. According to Hruza, the Attic marriage consisted of three acts: (1) *ἐγγύησις*; (2) *προμνή*; (3) completion, consummation (*Vollziehung*),—he denies admission to the phratry. But his reviewer, *op. cit.*, p. 331, is unwilling to accept his conclusions. In my opinion they are half-correct: the bride retained kinship with the family (*oikos*) of her father and his phrateres and *δημόβου* and entered the family, phratry and deme of husband. The introduction into the phratry in Attica may be regarded as the initiation of the bride, although ceremonies in the house of her husband were not wanting. Cf. Blümner, Griech. Privatalterthümer, p. 274 ff.

<sup>3</sup> *e. g.*, "For married women there is no impurity (in case of death) for relatives on the father's side"; Vishnu, XXII. 33.

<sup>4</sup> "The betrothal (by the father or guardian) is the cause of (the husband's) dominion over his wife"; Manu, V. 152.

<sup>5</sup> Vishnu, XXII. 32; McLennan, Patriarchal Theory, p. 221. The most thorough discussion of these ceremonies is that given by Leist, Altarisches Jus Gentium, p. 133 ff. Also, Fustel de Coulanges, Ancient City, pp. 53-60; Schrader, Sprachvergleichung und Urgeschichte,<sup>2</sup> pp. 554-5; for Greece, see Müller's Hdb.,<sup>1</sup> IV. p. 445 d.

<sup>6</sup> p. 6 ff.

mitted and even encouraged,<sup>1</sup> and I am inclined to believe that this was true for the Aryan period,<sup>2</sup> although the data do not warrant a positive assertion. The primary object of marriage was the begetting of legitimate children that the house might be continued and the *sacra* performed without interruption.<sup>3</sup> Sons were especially desired, since daughters could not perform the *sacra*.<sup>4</sup> In begetting a son, man discharges his debt to the manes and gains immortality.<sup>5</sup> Again, it is said, "He is perfect who consists of three persons united, his wife, himself and offspring."<sup>6</sup> This object of marriage attained an exaggerated value among the Hindoos, while for the understanding of Greek modes of thought, it is difficult to overestimate its importance. Accessory to this were the faithful service rendered by the wife, her aid in performing the religious rites, and the increased strength, honor, and happiness of the house resulting from the harmonious action of husband and wife.<sup>7</sup>

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<sup>1</sup> Od. VII. 58 f. for marriage of uncle and niece. In Crete (Law of Gortyn) and at Athens the heiress belonged to the *anchisteis*.

<sup>2</sup> The original prohibition of intermarriage between parent and child may linger in the Hindoo law against incest; Vishnu, XXXIV. 1-3. If marriage between these closest relatives is highly criminal, then — the Hindoos may have thought — it was still criminal, though in a less degree, when contracted between the most distant kin. Hence, probably, the sweeping prohibition of intermarriage within the gens; Āpastamba, II. 5, 11, 15; Vasishtha, VIII. 1. Cf. Manu, III. 5. It was in accordance with this pseudo-reasoning that the Hindoos developed their foolishly intricate rituals; Maine, *Ancient Law*, pp. 17-19.

<sup>3</sup> Isaeus, VI. 25; Demosthenes, LIX. 122; Plutarch, Solon, 20; Leist, *Altarisches Jus Gentium*, p. 114 ff. Cf. Krauss, *op. cit.*, p. 496.

<sup>4</sup> "A female shall not offer any burnt oblation"; Āpastamba, II. 7, 15, 18. Cf. Leist, *Alt. Jus Gent.*, p. 124.

<sup>5</sup> "Through a son he conquers the world, through a son's son he gains immortality, but through his son's grandson, he gains the world of the sun"; Manu, IX. 106, 137. Also among the South-Slavonians the son supports the father in old age, performs his funeral rites, remembers him before God and the world, continues the family and name; Krauss, *op. cit.*, pp. 469, 470-2.

<sup>6</sup> Manu, IX. 45.

<sup>7</sup> "Offspring, (the due performance of religious rites), faithful service, highest conjugal happiness and heavenly bliss for the ancestors and oneself, depend on one's wife alone"; Manu, IX. 28. "There is nothing mightier and nobler than

On failure of issue by her husband, a woman who has been authorized may obtain, in the manner prescribed, the desired offspring by cohabiting with her brother-in-law or with some other *Sapinda* of the husband.<sup>1</sup> The child thus begotten belongs to the husband.<sup>2</sup> If the husband has died without children, a brother-in-law,<sup>3</sup> a *Sapinda* or a *Sagotra*<sup>4</sup> (clansman) married<sup>5</sup> the widow to raise up a child to the deceased. This usage arose from the interest of the *Sapindas* in the perpetuity of the house, and their secondary claim to its property and persons.<sup>6</sup>

We come now to consider the common meal of the Aryan family. This is the oft-recurring religious observance of the family and, considered in its natural aspect, is the material end of the Hestia institution.<sup>7</sup> It is the duty of the father to labor for the support of the family, the entertainment of guests and of the divine guardians of the house. To this object, his own interest, his own appetite must be postponed. "Before a householder eats, he shall feed his guests, the infants, the sick people, the women under his protection, the various aged men, and those of low condition (who may be in his house)."<sup>8</sup> Thus *Themis* has transformed the rude violence of the stronger into a beneficent, self-denying power exerted for the preservation

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when man and wife are of one mind and heart in a house, a grief to their foes, and to their friends great joy, but their own hearts know it best"; Od. VI. 182 ff. Cf. Hesiod, Works and Days, 703. "A prudent wife is a great blessing" — *South-Slavonic proverb*; Krauss, *op. cit.*, p. 499.

<sup>1</sup> Manu, IX. 59, 167; Plutarch, Solon, 20. If the husband is living, he is the proper person to authorize; Gautama, XVII. 11.

<sup>2</sup> Gautama, XVIII. 11.

<sup>3</sup> Manu, IX. 69; Gautama, XVIII. 4.

<sup>4</sup> Gautama, XVIII. 6. There was a difference of opinion as to the limit permitted.

<sup>5</sup> The Hindoos called this the *Niyoga* marriage; see above-given references. For Sparta and the Germans, Leist, *Graeco-italische Rechtsgeschichte*, pp. 47-8.

<sup>6</sup> "A bride is given to the family (of the husband and not to the husband alone)"; *Āpastamba*, II. 10, 27, 3.

<sup>7</sup> Leist, *Altarisches Jus Gentium*, p. 75.

<sup>8</sup> Gautama, V. 25, also 3; Vasishtha, XI. 6-11.

and protection of the weak. In its spiritual character, on the other hand, it is a community of worship, and hence a symbol of kinship.<sup>1</sup> This community extended not to the living alone; but the dead also partook of the meal; for before the rest could eat, an offering was made in the domestic fire to the guardian deities of the house.<sup>2</sup> This sacrifice consisted of a portion of the food,<sup>3</sup> and was made by the house-father<sup>4</sup> or, in his absence, by his sons.<sup>5</sup> In the meal of the family the living and the dead were united. Thus must we supplement our statement as to the composition of the house. In the belief of the ancients, it included the ancestors as well as their living descendants,<sup>6</sup> and belonged not to a limited portion of time, but to eternity.

The ceremonies of birth were also of a religious character. Before these were performed, the child was not considered a member of the household, but was looked upon as a mere animal without rights in the family or state.<sup>7</sup> Hence arose the right of the father to expose the child.<sup>8</sup> Those were liable to exposure (1) who were of doubtful birth, (2) who were weak or deformed, and thus had little chance of success in the hard battle for existence in those early days of strife and blood. If the father concluded to acknowledge the child, the birth ceremonies were performed. These consisted of two parts: (1) the *Amphidromia*; (2) the *Feast of the Tenth Day*. In the *Amphidromia* a female servant, taking the child in her arms, ran around the hearth from left to right,—whence the name. In the second act the father took the child up, gave

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<sup>1</sup> Cf. Plato's *Laws*, V. p. 729 C.

<sup>2</sup> Vasishtha, XI. 3, 4; Od. XIV. 429.

<sup>3</sup> "That food must not be eaten of which (no portion) is offered in the fire, and of which no portion is first given (to guests)"; *Āpastamba*, II. 6, 15, 14.

<sup>4</sup> *Çāṅkhayana*, II. 17.

<sup>5</sup> Leist, *Altarisches Jus Gentium*, p. 68.

<sup>6</sup> Hearn, *Aryan Household*, p. 21 ff.; Fustel de Coulanges, *Ancient City*, pp. 41 ff., 71 ff.

<sup>7</sup> Hearn, *Aryan Household*, p. 344.

<sup>8</sup> Herodotus, I. 59.



it a name and presented it to his kinsmen, who had gathered on invitation to a feast in honor of their new relative.<sup>1</sup> The taking up of the child by the father is the formal acknowledgement of it as a member of the family, while the carrying around the hearth is its presentation to the household gods.<sup>2</sup> It is to be observed that these *sacra* make the child a member of the household. Without these he has no family rights and hence no connection with the gens or, in later times, with the state. And it is of the utmost importance that relatives be present to witness the *sacra*; for only by their testimony is the initiated person enabled in later years to maintain his rights. We are met at every point in the way by the fact that the natural basis of kinship, alone existing in the *Rta* period, *viz.*, birth, was superseded in the following period, in obedience to *Themis*, by religious ceremonies. Hence, among the Aryans, religion, not birth, is to be regarded as the basis of kinship. Daughters were received into the family in the same manner as sons,<sup>3</sup> and it was equally important that their acceptance should be registered in the memory of kinsmen. The accepted son or daughter was from that day forth a member of the household and a sharer in its spiritual blessings. Adoption also was accompanied by sacred rites and offerings to the fire.<sup>4</sup> Slaves, too, were initiated,<sup>5</sup> and participated to a certain extent in the religion of the house.<sup>6</sup> After the son had been fully instructed by the father

<sup>1</sup> Leist, Graeco-italische Rechtsgeschichte, p. 25; Fustel de Coulanges, p. 67; Blümner, Die griechischen Privatalterthümer in K. F. Hermann's Lehrbuch d. griech. Antiquitäten, p. 281; Institutes of Vishnu, XXVII. 5. The two acts are here designated by their Greek names. It is not thought necessary to describe these ceremonies in detail.

<sup>2</sup> Leist, Graeco-italische Rechtsgeschichte, p. 25.

<sup>3</sup> Macrobius, I. 16, 36.

<sup>4</sup> Fustel de Coulanges, Anc. City, p. 70. The householder (in India) received the child with these words: "I take thee for the fulfilment of my religious duties: I take thee to continue the line of (my ancestors)"; Baudhâya, Parisishta, VII. 11.

<sup>5</sup> Demosthenes, XLV. 74; Fustel de Coulanges, Ancient City, p. 150.

<sup>6</sup> "They declare the fragments which have fallen on the ground at a (Çraddha) to the manes to be the share of honest, dutiful servants"; Manu, III. 246.

in the sacred formulae required for the domestic ceremonies, he was, at least in India, initiated into the worship of the house with still further rites.<sup>1</sup> From that time forward he could perform the worship of the house in the absence of the father.

It was for the performance especially of the *sacra* of death (Gk. *nomizomena*, ἐναγίζειν,<sup>2</sup> Lat. *parentare*, i.e., worship of parents) that the house was organized and maintained. The most dreadful fate befell the deceased ancestor, if his worship was discontinued. He was doomed to perpetual hunger, and his soul could find no rest in the grave.<sup>3</sup> His living descendants experienced in consequence an equally terrible calamity. The curses of the neglected spirits visited their lands with sterility, and their people and flocks with pestilence. On the other hand, a proper fulfilment of the duties to the dead brought length of days with physical and moral health and material prosperity to the members of the household.<sup>4</sup> The duty of performing this worship devolved mainly upon the living male descendants. Accordingly, it was the chief care of the householder to leave a son, begotten or adopted, to continue the worship after him.<sup>5</sup> The son must not merely be

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On the *sacra* of birth, Christian Petersen, Ueber die Geburtstagsfeier bei den Griechen, is especially good. Also, Fustel de Coulanges, *Ancient City*, pp. 66-8; Leist, *Graeco-italische Rechtsgeschichte*, pp. 244 ff., 716-7; *Altarisches Jus Gentium* (see index); Blümner, *Die griech. Privatalterthümer*, p. 281 ff.; Müller's *Hdb.*,<sup>1</sup> IV. p. 450 a-b; Krauss, *Sitte und Brauch der Südslaven*, p. 538 ff.

<sup>1</sup> *Āpastamba*, I. 1, 2, 7-9. Before this he could not offer sacrifices in the fire; *Gautama*, II. 4. The initiation of *Brāhmaṇa*, *Kṣatriya* and *Vaiśya* took place in the eighth, eleventh and twelfth years respectively; *Gautama*, I. 5, 11.

<sup>2</sup> Fustel de Coulanges, *Ancient City*, p. 42; Isaeus, VI. 51.

<sup>3</sup> *Iliad*, XXIII. 71 ff. It goes hard with those who hinder burial; *Isocrates*, XIV. 55; Rohde, *Psyche*, p. 200 f.

<sup>4</sup> The South-Slavonians, in their clan feasts—now in honor of their patron saint, but formerly of their clan-ancestor—prayed for offspring; Krauss, *Sitte und Brauch der Südslaven*, p. 53. The Athenians before marriage prayed to the *ῥητοράδες* (for explanation of term, see Pollux, III. 17) for birth of children; Phot. Suid. *sub voc.* Prayers were offered to *Gaia* and to the dead with her (*Aesch. Pers.* 220) for good crops; Rohde, *Psyche*, p. 194.

<sup>5</sup> The necessity of marrying and begetting children is emphasized in *Baudhāyana*, IV. 1, 17; *Vasishtha*, VIII. 11; *Manu*, IX. 14 and 8. The object of adoption is stated in *Baudhāyana*, *Parisishṭa*, VII. 5, 11. The father's most

begotten in lawful wedlock,<sup>1</sup> but must be accepted and initiated as above described.<sup>2</sup> In case there was no son, a daughter's son undertook the duty.<sup>3</sup> Failing this, adoption was enjoined.<sup>4</sup> The person adopted was the nearest available member of the cognate family,<sup>5</sup> *e. g.*, a nephew, cousin or second cousin. If the deceased left neither a begotten nor adopted son, the cognate family must see to the performance of the *nomizomena*;<sup>6</sup> and appoint the nearest available person of their own number as a son to the deceased.<sup>7</sup> While the members of the house took a leading part in the burial service,<sup>8</sup> they were assisted by the cognate family.<sup>9</sup> The chief features of the *nomizomena* were, in ancient Greece, the washing and clothing of the body by the women of the house, the laying out of the body, the procession and burial, the return and funeral meal in the house of the deceased, the days of mourning and the periodical sacri-

earnest prayer was that a son be born to him to continue the race and inherit the property; Demosthenes, XLIII. 12. Cf. Dem. XLIV. 32, which shows that the *sacra* and inheritance are inseparable.

<sup>1</sup> Isaeus, VII. 30, and especially VI. 51. Cf. VII. 19.

<sup>2</sup> A child may perform religious rites after initiation; Âpastamba, II. 7, 15, 24-25, quoted from the Veda. Even a legitimate child if not presented to the *phrateres* (in Athens) was considered a *viduus*; Isaeus, III. 75-6.

<sup>3</sup> "He who has no son may make his daughter an appointed daughter in the following manner, saying to her husband: 'The male child born of her shall perform my funeral rites'"; Manu, IX. 127; Gautama, XXVIII. 18; Vasishtha, XVII. 17; Demosthenes, XLIII. 12; Isaeus, VIII. 31.

<sup>4</sup> "Those who expect to die make provision for themselves in order that they may not have their houses desolate, but that there may be some one to offer sacrifice to them — and perform for them all the *nomizomena*. Wherefore, if they die childless, they yet leave a son by adoption. And this is not merely their private judgment of the matter, but the common law of the state has publicly set forth this principle. For it enjoins upon the Archon by law the care of the households that they be not left destitute of heirs"; Isaeus, VII. 30.

<sup>5</sup> This must have been true of Athens before Solon (Plutarch, Solon, 21), and of India, Vasishtha, XV. 6.

<sup>6</sup> Demosthenes, XLVIII. 5; Gautama, XIV. 34.

<sup>7</sup> Isaeus, VII. 44.

<sup>8</sup> "A father and a mother shall be carried out by their sons who are equal in caste to their parents"; Institutes of Vishnu, XIX. 3; Isaeus, VIII. 22.

<sup>9</sup> Demosthenes, XLVIII. 5.

fice.<sup>1</sup> Some of the features appear in the Hindoo ceremonials together with others, as the procession about the grave from left to right and the bath in the brook outside the village.<sup>2</sup> Common features of the *nomizomena* are the religious character of the rites, the prominent part in the ceremonies taken by the *anchisteis* and by the female relatives of the deceased, and the nine (or ten) days of mourning.<sup>3</sup> We have observed above, the value of the birth-ceremonies as establishing the son's rights of inheritance. Of equal importance are the *nomizomena*. If he fails to perform these, he is considered an alien, and can have no claim on the estate of the deceased. This became a matter of great consequence to the Athenians.<sup>4</sup>

We have now considered all the more important ceremonies connected with house-worship. There remains the discussion of the several members of the household in the order of their importance.

The power of the father was not the arbitrary force of the stronger exercised for self-gratification to the injury of the

<sup>1</sup> Demosthenes, XLIII. 62-6; XLVIII. 5; Isaeus, VIII. 39; VI. 65; VII. 30; IX. 4, 7.

<sup>2</sup> Institutes of Vishnu, XIX. 6; Âpastamba, II. 6, 15, 10, and 2-4; Vasishtha, IV. 11-17; Baudhâyana, I. 5, 11, 24-25. Further authorities for the *nomizomena* are Leist, Graeco-italische Rechtsgeschichte, pp. 24 ff., 716 ff.; Altarisches Jus Gentium, pp. 91, 188 ff., 193, 606; Fustel de Coulanges, Ancient City, pp. 15-29, 49 ff.; Blümner, Die griech. Privatalterthümer, p. 361 ff.; Rohde, Psyche, pp. 200 ff., 213 ff.; Zimmer, Altindisches Leben, p. 401 ff. That the South-Slavonians made offerings to the dead is affirmed by Krauss, Sitte und Brauch der Südslaven, pp. 630-1.

<sup>3</sup> Gautama, XIV. 34; Âpastamba, II. 6, 15, 10; Demosthenes, XLIII. 62-5. The Greeks and Romans mourned nine days (*τὰ ἑννέα*, *novendialia*); the Hindoos, ten. The former may have counted from the day of death; that the latter counted from the day of burial is now established beyond a doubt by Rohde, Psyche, p. 213 and n. 5.

<sup>4</sup> "These men, therefore, are seeking to bring about a most outrageous result — namely, that we and the women of our family were obliged to inherit the corpse of Hagnias when he died and to perform all the last offices, as relatives and next in kin; but that Macartatus is to be held entitled to the estate of the deceased Hagnias, although he is descended from the house of Stratius and his mother was daughter of Apolexis the Prospaltian, and sister of Macartatus. But this is neither just nor righteous, men of the jury"; Demosthenes, XLIII. 65.

weak. Rather, it was a beneficent, protecting, and supporting power founded upon the order of nature<sup>1</sup> and sanctified by religion.<sup>2</sup> It was exercised, therefore, toward all who were in need of this support and protection, *viz.*, women and children,<sup>3</sup> guests,<sup>4</sup> beggars<sup>5</sup> and slaves.<sup>6</sup> "The rule of the father over his children is royal, for he receives both love and respect due to age, exercising a kind of royal power."<sup>7</sup> "The rule over his wife is a constitutional rule,"<sup>8</sup> since he takes her into his counsel in all matters pertaining to the good of the family. "The rule of the master over his slave is in the interest of the master primarily,"<sup>9</sup> although a good master naturally cares for the well being of his slave. The latter kind of rule is a tyranny. Thus "the rule of the household is a monarchy, for every house is under one head."<sup>10</sup> It is in the interest of unity that the wife renders her voluntary submission to the law of her husband.

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<sup>1</sup> Aristotle, *Politics*, I. 12, 1 (p. 1259 b, 1): "The male is by nature fitter for command than the female, just as the elder and full-grown is superior to the younger and more immature."

<sup>2</sup> Aristotle, *Politics*, I. 2; Leist, *Graeco-italische Rechtsgeschichte*, p. 57 ff.

<sup>3</sup> "Women are considered to be destitute of strength"; Baudhâyana, II. 2, 3, 46, quoted from Veda. "Her father protects her in childhood, her husband protects her in youth, and her sons protect her in old age. A woman is never fit for independence"; Manu, IX. 3; Gautama, XVIII. 1; Vasishtha, V. 1-2; Baudhâyana, II. 2, 3, 44-45. "The slave has no deliberative faculty at all; the woman has, but it is without authority; and the child has, but it is immature"; Aristotle, *Politics*, I. 13, 7 (p. 1260 a, 12).

<sup>4</sup> "Endless worlds are the portion of those who honor their guests (*Āpastamba*, II. 2, 4, 15,) and earthly happiness"; *id.* 16 and 14. Cf. *Od.* I. 119 ff.; III. 34 ff.; XIX. 194; VIII. 206 ff.; XVIII. 326 ff.; XXI. 26 ff.; Plutarch, *Theseus*, 6.

<sup>5</sup> Manu, V. 226-235; *Od.* VI. 207.

<sup>6</sup> He must stint himself rather than a slave who does his work; *Āpastamba*, II. 4, 9, 10-11. "One's wife and one's son must be considered as one's own body, one's slave as one's shadow; one's daughter as the highest object of tenderness; hence, if one is offended by (any one of) these, one must bear it without resentment"; Manu, IV. 184-5. Cf. Aeschylus, *Agamemnon*, 950. At Athens a slave was avenged by the owner; Demosthenes, XLVII. 68-73.

<sup>7</sup> Aristotle, *Politics*, I. 12, 3 (p. 1259 b, 10).

<sup>8</sup> *Id.* I. 12, 1 (p. 1259 b, 1).

<sup>9</sup> *Id.* III. 6, 3 (p. 1278 b, 35).

<sup>10</sup> *Id.* I. 7, 1 (p. 1255 b, 19); Krauss, *Sitte und Brauch d. Südslaven*, p. 80.

"The householder should take a wife of equal rank, who has not belonged to another man and is younger (than himself)."<sup>1</sup> With her he is to live for the fulfilment of his religious duties.<sup>2</sup> They two are to dwell together till death in harmony and in exercise of mutual fidelity and love.<sup>3</sup> He should support a sick wife who is virtuous and kind to him.<sup>4</sup> Even a wife who has left his house or committed sin should not be abandoned, but received back after purification.<sup>5</sup> With all the members of his house he should be at peace, suffering rather than inflicting injury.<sup>6</sup> Especially the weak and disabled should not be neglected,<sup>7</sup> nor should the children eating with him be abused.<sup>8</sup>

<sup>1</sup> Gautama, IV. 1; Krauss, *op. cit.*, p. 333. She must be of equal rank that the gods and manes may eat the offering presented with her assistance; Manu, III. 18; Institutes of Vishnu, XXVI. 1-2. The Athenian usage was remarkably similar. "Anciently, men of Athens, there was a regal dynasty in Attica, and the sovereignty belonged to those who from time to time were most distinguished by reason of their being indigenous, and the king offered all the sacrifices, and at the most holy and mysterious his wife officiated, as it was reasonable she should, being queen. . . . The people continued to elect the king as before, . . . and they passed a law that his wife should be of Athenian parentage, and that he should marry a virgin who had never known another man, so that the mystic sacrifices might be offered on behalf of the state according to ancient usage, and that religious worship should be duly paid to the gods without any retrenchment or innovation"; (Demosthenes) LIX. 74-5.

<sup>2</sup> "If he has a wife who is willing and able to perform her share of the religious duties, and who bears sons, he shall not take a second"; Āpastamba, II, 5, 11, 12. Otherwise a second may be taken; id. 13; Isaeus, II. 8.

<sup>3</sup> "Let mutual fidelity continue till death"; Manu, IX. 101. "In that family where the husband is pleased with his wife, and the wife with her husband, happiness will be assuredly lasting"; Manu, III. 60.

<sup>4</sup> Manu, IX. 82.

<sup>5</sup> Vasishtha, XXVIII. 2-3; Āpastamba, II. 10, 27, 1. "If (adulteresses) have performed (the prescribed penances) they are to be treated as before (their guilt). For the connection of husband and wife takes place through the law." Compare the case of Helen.

<sup>6</sup> "With his father and his mother, with his son and his wife, with his daughter and with his slaves he should not have quarrels"; Manu, IV. 180. Cf. 184-5.

<sup>7</sup> Manu, IX. 201-2.

<sup>8</sup> Institutes of Vishnu, LXVIII. 25.

Having once accepted a child, the father was under obligation to provide for his maintenance, to instruct him in the religion of the house, and to prepare him for the duties of life.<sup>1</sup> The extent of the father's power over his children must have varied with the position of the mother and the terms of the marriage contract. The father was bound also by the usages of his gens, and could in no case put a child to death without the consent of the collective *anchisteis*. Judgment lay not in the hands of any individual, but came from the gods in the authorized manner. Thus the householder in all criminal cases summoned the *anchisteis* to a court, over which he himself presided.<sup>2</sup> The gods spoke through the mouths of the kinsmen, and the decision had the force of divine law. Even the privilege of rejection was restricted in early Greece and Rome. We may be assured that the father never arbitrarily sentenced his son to death. This would imperil the continuance of the house, excite the wrath of the domestic gods, deprive the gens of a portion of its strength, and expose himself to prosecution for homicide on the part of the mother's kinsmen. On attaining his majority, the son received the wife whom the father had chosen for him,<sup>3</sup> and was henceforth free from the *patria potestas*, but not from agnation with the father nor from the *obsequium* which children owed to their cognate parents. These continued through life. The latter included the *gerotrophy*, or duty of supporting the parents during old age, and the performance of the *nomizomena*.<sup>4</sup>

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<sup>1</sup> If the parent neglected the education of the child, the latter became thereby free from the duties of the *gerotrophy*; Leist, Graeco-italische Rechtsgeschichte, pp. 13-14; Plutarch, Solon, p. 22.

<sup>2</sup> Leist, Graeco-italische Rechtsgeschichte, pp. 291-2. This court of the kin, presided over by the householder, is the pattern for the later Boule presided over by the king. The *Themis* of the state must have had its origin, therefore, in the *Themis* of the household, e.g., the Cyclops gives his *Themistes* to his family, yet without the co-operation of the kin, — his house is completely isolated; Od. IX. 112-115.

<sup>3</sup> Od. IV. 10.

<sup>4</sup> Leist, Graeco-italische Rechtsgeschichte, p. 27; Isaeus, II. 18, 45-6; VIII. 22, 32.

The father could sell his minor sons and unmarried daughters.<sup>1</sup> It appears that even here, merely the labor of the youth and not the person itself was disposed of by sale.<sup>2</sup> This, too, was probably controlled by usage. The father could also emancipate a son, allowing him to enter by adoption into another house.<sup>3</sup> The son was thus freed from relationship with his father, but not with his mother.<sup>4</sup> It was the duty of the father also to give his daughter in marriage,<sup>5</sup> bestowing a dowry from the *eedna* of the wooer.<sup>6</sup> An agreement was no doubt made, in early times, with the bridegroom as to the disposition of the dowry and the treatment of wife and children.<sup>7</sup> Women of high rank both in Homeric Greece and in India were allowed to choose their husbands.<sup>8</sup> The daughter at marriage passed not only from under the authority of the father, but also out of the house, retaining her cognate relationship with him.<sup>9</sup> The father could also appoint a guardian for his children and wife.<sup>10</sup> In Athens his authority even extended to the appointment of another husband for the wife.<sup>11</sup> This, however, appears to be a growth from the peculiar views of the Athenians as to marriage and property.

The wife, though under her husband's protection, and though legally represented by him, possessed a name (*patni*, *πόρνα*,

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<sup>1</sup> This was true of Athens before Solon (Plutarch, Solon, 13), but probably affected only the non-Eupatrids. In India the mother must be consulted in the transaction. "The father and mother have power to give, to sell, and to abandon their son"; Vasishtha, XV. 2.

<sup>2</sup> Fustel de Coulanges, *Ancient City*, p. 120, with references.

<sup>3</sup> Id. p. 118. Krauss, *Sitte und Brauch der Südslaven*, pp. 471-2, 477.

<sup>4</sup> Isaeus, VII. 25. Thus he inherits any property which may fall to her. Nor is he ever free from the duty of supporting her; Baudhâya, II. 2, 3, 42.

<sup>5</sup> Iliad, XIX. 291.

<sup>6</sup> Blümner, *Die griech. Privataltertümer*, p. 262, with references.

<sup>7</sup> Od. II. 132.

<sup>8</sup> In the case of Penelope, Od. II. 114, the command of the father is seen to be only a legal sanction to her own choice. Cf. Law of Gortyn, VII. For the case of Damayantî, see Nalopâkhyân, bk. II. çloka 8 ff.

<sup>9</sup> Manu, V. 152.

<sup>10</sup> Fustel de Coulanges, *Ancient City*, p. 119.

<sup>11</sup> Demosthenes, LVII. 41, and especially XXXVI. 28-32.



δέσποια), which designated her as a sharer in the rule over the family.<sup>1</sup> She was equally with the father the cause of the son's existence,<sup>2</sup> and exercised in consequence the power of life, death, and sale over the latter conjointly with her husband.<sup>3</sup> It was her duty even more than that of the husband to "bring up" the children,<sup>4</sup> and she in turn was held in even greater reverence by them.<sup>5</sup> She shared in the privileges of the *gerotrophy* and the *nomizomena*.<sup>6</sup> Even in Athens, where the position of woman was comparatively low, the mother's tomb was visited with devotion by her children.<sup>7</sup>

The duties of the wife have been enumerated by ancient writers as follows : she should live in harmony with her husband, should show reverence for her mother-in-law, father-in-law, divinities, and guests, keep the household utensils in good order, maintain saving habits, observe auspicious customs, refrain from the practice of incantations, from decorating herself with ornaments or resorting to the houses of strangers during the absence of her husband, from standing near the

<sup>1</sup> Rigveda, X. 85, 46; Atharva-Veda, XIV. I. 439; Leist, *Graeco-italische Rechtsgeschichte*, pp. 57-8.

<sup>2</sup> "Man formed of uterine blood and virile seed proceeds from his mother and his father (as an effect) from its cause." Vasishtha, XV. 1; Isaeus, XI. 17. About this there was some difference of opinion; Aeschylus, *Eumenides*; Manu, IX. 35. Cf. Leist, *Graeco-italische Rechtsgeschichte*, p. 111.

<sup>3</sup> Vasishtha, XV. 2; Law of Gortyn, III.

<sup>4</sup> "A mother does very many acts for her son; therefore he must constantly support her (even) though she be fallen"; *Āpastamba*, I. 10, 28, 9. "A father who has committed a crime causing loss of caste must be cast off. But a mother does not become an outcast for her son"; Vasishtha, XIII. 47.

<sup>5</sup> "The mother is a thousand times more venerable than the father"; Manu, II. 145; cf. Xenophon, *Mem.* II. 2. Cf. Delbrück, *op. cit.*, p. 576.

<sup>6</sup> Leist, *Altarisches Jus Gentium*, p. 124; Isaeus, VI. 65.

<sup>7</sup> Isaeus, VI. 65. Theseus (according to Plutarch) provided a sum of money for the maintenance of the worship of his wife, Ariadne. Hearn, *Aryan Household*, has made a great mistake in supposing that the mother was not worshipped after death. "Om, I satiate the father, Svadha, adoration! the grandfathers; the great-grandfathers; the mothers; the grandmothers; the great-grandmothers; the maternal grandmothers; the mothers' grandmother; the mothers' great-grandmother"; Baudhāyana, II. 5, 10, 1.

door-way and windows of her house, from acting by herself in any manner.<sup>1</sup>

While children were held to be "the cause of happiness in this world and after death," the eldest son occupied an exceptional position in the family. With his birth the house was secure against desolation. The father had discharged his debt to the manes, and might now die in peace. Probably the importance attached to the eldest son originated, in the *Rta* period, in the fact that he was the first to lend assistance to the father in sustaining the family, and especially in defending it against enemies. With the peculiar belief of the ancients that in the commission of offences like must be repaid by like, the son came to be regarded as the father's natural avenger.<sup>2</sup> And then, when the *jus divinum* became effective it enhanced the importance of the eldest son, since the duty of continuing the worship devolved chiefly upon him.<sup>3</sup> Accordingly it was natural that he should step into the place of the deceased parent, should be a father to his unmarried sisters and minor brothers.<sup>4</sup> He must give his sisters in marriage,<sup>5</sup> providing a dowry for each, and must help the younger brothers to settle in their new homes. He was likewise the protector of his mother and her legal representative.<sup>6</sup> In the division of the property he was favored somewhat,

<sup>1</sup> Institutes of Vishnu, XXV; Manu, V. 165; Gautama, XVIII. 2-3. This accords almost verbally with (Aristotle), Economics, III. 1 (Susemihl); Krauss, Sitte und Brauch der Südslaven, pp. 483-4, 491-3.

<sup>2</sup> "So good a thing it is that a son of the dead should still be left, even as that son also took vengeance on the slayer of his father, guileful Aegisthus, who slew his famous sire"; Od. III. 196 ff. For the superior importance of the eldest son see Zimmer, Altindisches Leben, p. 328; Delbrück, Die indogermanischen Verwandtschaftsnamen, p. 578.

<sup>3</sup> Manu, IX. 204, 213.

<sup>4</sup> Manu, IX. 108. This position he holds by his own merit; id. 110. "The elder and full-grown is (by nature) superior to the younger and more immature"; Aristotle, Politics, I. 12, 1 (p. 1259 b, 3).

<sup>5</sup> Provided the paternal grandfather is not living; Institutes of Vishnu, XXIV. 38; also, Isaeus, II. 5.

<sup>6</sup> Manu, IX. 3; Thalheim, Griech. Rechtsalterthümer, p. 10.

since he had more onerous duties to perform.<sup>1</sup> But the Aryans knew nothing of an exclusive primogeniture. When such a thing existed in later times, it was apparently a development from the idea of precedence. Reserving a special share for the eldest, the legitimate sons shared equally.<sup>2</sup> The position of the younger sons will be clear from what has already been said. It remains to speak briefly of the daughters. During the *Rta* period it was the custom especially of warlike races to expose their infant daughters<sup>3</sup> and to procure their wives by robbery and pillage. At this time, of course, those gentes which practised the custom were mainly or exclusively exogamous. The very dearth of women, caused by infanticide, enhanced their value.<sup>4</sup> Then follows the epoch of marriage by purchase, with their resulting elevation, as above set forth. Nothing, however, contributed so much to the improvement of woman's condition as the rise of the *jus divinum*. Yet owing to the idea that the family was an indivisible unit under a monarchical government, women could not originally own separate property or hold a position of legal independence. The beginning of her separate property is found in the ornaments given her at marriage. To these, other gifts were afterwards added.<sup>5</sup> As religion restricted the *eedna*, it enjoined that a portion or all of this fund should be given to the bride by way of dowry. Further, the father of the maiden often endowed his daughter that she might the more readily obtain a worthy husband.<sup>6</sup> Occasionally also

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<sup>1</sup> Gautama, XXVIII. 5, 9-10; Āpastamba, II. 6, 13, 13; Demosthenes, XXXVI. 34-5.

<sup>2</sup> Manu, IX. 104; Gautama, XXVIII. 1; Āpastamba, II. 6, 14, 11. To avoid harshness a maintenance was given to the illegitimate son; Manu, IX. 163, 4. In Athens, also, legitimate sons shared equally; Isaeus, VI. 25.

<sup>3</sup> Schrader, Sprachvergleichung und Urgeschichte, p. 564; Zimmer, Altindisches Leben, pp. 319-20.

<sup>4</sup> McLennan, Studies in Ancient History, p. 91 f.

<sup>5</sup> Manu, IX. 194-5; Āpastamba, II. 6, 14, 9; Vishnu, XVII. 18.

<sup>6</sup> Leist, Graec. Rechtsgesch., p. 76. This is true for India in the Vedic period and for Rome.

the dowry was increased in repayment of some special service of the son-in-law. Thus in the course of time, a considerable property went with the maiden in marriage. This was in India held to be separate property of the wife,<sup>1</sup> and descended regularly to her daughters.<sup>2</sup> Among the East Dorians, there were added to this property the separate earnings of the wife, — over all of which the husband had in his own right no control.<sup>3</sup> In Athens the dowry belonged to the wife, and some property of the husband was mortgaged to secure it.<sup>4</sup> When the furniture was thus mortgaged, the wife regarded herself as the real owner of the furniture.<sup>5</sup> In case of divorce in Athens, the dowry, returning to her father's house, was still held *de facto* as her separate property that it might be bestowed in case she should marry again.<sup>6</sup>

(b) *The Cognate Family.* (*Anchisteis, Sapindas, Sobrini-circle.*)

While the household consisted of a married pair with their descendants through males only, theoretically limited to three generations, — children, grandchildren and great-grandchildren, — the cognate family to which a householder belonged consisted of the descendants through both males and females of his great-grandparents. The household, therefore, formed the

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<sup>1</sup> Manu, IX. 194-5.

<sup>2</sup> Gautama, XXVIII. 24.

<sup>3</sup> Law of Gortyn, III.

<sup>4</sup> Demosthenes, XXX. 4.

<sup>5</sup> Demosthenes, XLVII. 57.

<sup>6</sup> Kennedy's *Private Orations of Demosthenes* (translation), p. 319.

Our chief original authorities on house-worship are for India the *Gṛhya-Sūtras*, translated by Oldenberg in the *Sacred Books of the East*, vol. XXIX. the *Dharma-Sūtras* — *Āpastamba* and *Gautama*, *Vasishtha* and *Baudhāyana*, — translated by Bühler in vols. II. and XIV. of the same series, although much valuable matter is to be gained from Hindoo literature in general. Lyall, *Asiatic Studies*, ch. II., and Mayne, *Hindu Law and Usage*, p. 55. The orations of *Isaeus* and private orations of *Demosthenes* are indispensable to the student of Greek private *sacra* and dependent legal institutions. Fustel de Coulanges, *Ancient City*, pp. 9-52; Hearn, *Aryan Household*, p. 15 ff.; Spencer, *Principles of Sociology*, I. pp. 304-324; ancestor-worship of the Aryans, p. 314; survivals of — p. 320 ff.; once

center of this larger group. As stated above, the son in marriage laid the foundation of a new household; yet we are not to consider it as fully established till the death of the father and the final settlement of the estate. Up to that point of time, the son, though independent, was regarded as belonging to the household of his father; thereafter he is himself the head of a new household, including theoretically three generations of descendants.

The children, as already stated, have a right to maintenance, protection and education from their parents; the daughters also to dotation and the sons ultimately to inheritance. On the other hand they are under obligations to perform the *gerotrophy* and *nomizomena* of father and mother. To these rights and duties which concern the members of the household as parents or children, may be added those which affect all members alike, general obligations of mutual help, defense and redress of injuries. To the latter group may be assigned the obligation of vengeance in case of homicide. All these are to be fulfilled when possible, within the household.<sup>1</sup> The cognate family, on the other hand, is under obligations to perform any or all of those duties, if the ability should be lacking within the household, or to assist in their performance so far as required.<sup>2</sup> Thus they are always present at the *sacra* of birth and death, and frequently required to aid in wreaking blood-vengeance. When an orphan daughter is left without property, the cognate family is under obligations to provide her with a

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universal, p. 440. Maine, *Early Law and Custom*, chs. III., IV.; Howard, *Development of the King's Peace*, 3-4. Leist, *Graeco-italische Rechtsgeschichte* and *Altarisches Jus Gentium* are of the highest value, treating of the development of legal institutions from the principles of ancestor-worship. Schömann, *De Dis Manibus, Laribus et Geniis*; Frazer, *Prytaneum, Temple of Vesta, etc.* *Journal of Philology*, No. XXVIII. p. 145 ff. For evidence of ancestor-worship in ancient Greece, especially in Homer and Hesiod, and for the history and significance of this worship in Greece, see Rohde, *Psyche*, who has done an invaluable service in placing this subject, for the first time, in its true historical relation.

<sup>1</sup> Od. III. 307; XXIV. 433-5.

<sup>2</sup> Od. XXIV. 433-5; XV. 223 ff; *Iliad*, XV. 554; Od. VIII. 582; Gautama, XV. 13.

husband from their own number, or give her in marriage with a dowry.<sup>1</sup> If, however, she is an heiress, one of their number may claim her in marriage.<sup>2</sup> In case no heirs are left within the household, a son is adopted into it from the *anchisteis*, who thus becomes heir to the estate and the obligations connected with it.<sup>3</sup> It is to be noticed that here, as well as in the household, rights spring out of, and are essentially dependent upon, duties.<sup>4</sup> For example, if a kinsman has failed to assist in the *nomizomena* of the deceased, he has no right of inheritance.<sup>5</sup> We may observe further that the order of precedence in rights is identical with the order of precedence in duties.<sup>6</sup> This order is one of nearness to the household, relationship being reckoned through females as well as males, but the latter taking precedence.<sup>7</sup> We have, therefore, a different system of kinship in the cognate family from that which prevails within the household. In the latter case, it is agnatic, a daughter and her children belong to another household, but they cannot pass out of the cognate family.<sup>8</sup> An only daughter, however, is an exception to the rule, being regarded as an agnate.<sup>9</sup> The houses of a gens exclude each other, the cognate families overlap.<sup>10</sup> With respect to the cognate family, the gens may be

<sup>1</sup> Demosthenes, XLIII. 54 (Law as to heiresses); Law of Gortyn VII.-VIII.; Krauss, *Sitte und Brauch der Südslaven*, pp. 468, 334.

<sup>2</sup> Demosth. XLIII. 55.

<sup>3</sup> Isaeus, VII. 31, 44.

<sup>4</sup> "And, men of the jury, while the legislator has given those rights to the relatives, he has not omitted to impose by the law a great number of duties, the performance of which by the relatives is made compulsory"; Demosthenes, XLIII. 53. Cf. 61.

<sup>5</sup> Demosthenes, XLIII. 62-5. If the adopted son refuses to perform the *sacra* and the civil duties of his adoptive father's house, he has no right to the estate, — it reverts to the kinsmen in blood; Law of Gortyn, X.

<sup>6</sup> Demosth. XLIII. 54.

<sup>7</sup> Manu, IX. 35; Demosthenes, XLIII. 78.

<sup>8</sup> Institutes of Vishnu, LXXXIV. 17-18.

<sup>9</sup> Isaeus, III. 41-2, 50; Demosthenes, LVII. 41; Manu, IX. 130, 136; Gautama, XXVIII. 19; Vasishtha, XVII. 16.

<sup>10</sup> Demosthenes, XLIII. 26: "To Macartatus . . . who is both in the (cognate) family of Hagnias and that of Stratius,"

regarded as a series of intersecting circles, and when there is connubium between two gentes, some of the circles (cognate families) of the two gentes also intersect. Within the gens this intersection is not always complete,—there are groups of intersecting circles which are independent of each other, or at least in which no connection can be traced. In such a case, the gens is said to be heterogeneous as to relationship. This can come about in two ways. First, a connection which actually existed may be forgotten, and secondly, alien families may be introduced into a gens by adoption.<sup>1</sup>

(c) *The Gens as a Whole.*

It is merely the extended family. The instinct of self-preservation led the sons to combine at the death of their

<sup>1</sup> Hearn, *Aryan Household*, pp. 138–9, distinguishes the pure genealogic from the non-genealogic, or fictitious clan. The first class is composed of clans into which no families have been adopted; the second, of those which are formed in part by adoption, or are wholly fictitious, being organized according to agreement of the component families. The manner in which kinship within the more ancient gentes was forgotten and revived is clearly set forth by Busolt, *Griech. Gesch.*, I. p. 395.

GENERAL NOTE.—That good-will and kindness to relatives rest upon a basis of nature appears from the following: “If, as you pretend to be a brother, you do the acts of a brother, people will believe that you are my kinsman. But if you plot against me, go to law with me, envy me, slander me, it will be thought that you have intruded into a strange family and treat the members as if they were alien to you”; Demosthenes, XXXIX. 34. One relies upon his kin in battle arising from a feud; Od. XVI. 115–6. A person without kin or phratric relation is absolutely defenceless in case of homicide; (Dem.) XLVII. 70, 72. Cf. Krauss, *Sitte und Brauch der Südslaven*, p. 47. For mutual helpfulness among kinsmen see id. p. 40. It is not well to defend oneself against relatives; Is. I. 6. It is a most pitiable thing to be so abused by relatives as to be compelled to go to law with them; Dem. XL. 1. A man does an act of justice in favoring a kinsman with evidence in court; Dem. LVII. 53. Theomnestus, a certain Athenian, prosecutes Neaera to avenge a sister and a father-in-law and a sister’s children and a wife; (Dem.) LIX. 12. That the cognate family is also a religious society for the worship of family gods appears from the term *θεοὶ οὐδ’ ἄλλοι*, deities whom the *συγγενεῖς* worship—*ἀργαῖον*—in common. The chief part of their worship was the performance of the *nomisomena*, *Ἀpastamba*, II, 6, 15, 2–4, 10 and 11; Demosthenes, XLIII. 62. The three great legal ideas growing out of the idea of the cognate family are those suggested by the terms *nomisomena*, *blood-vengence*, and *inheritance*; Leist, *Graeco-italische Rechtsgeschichte*, p. 22.

father, rather than to separate as formerly. When such combination takes place the gens comes into existence.<sup>1</sup>

It is most natural in such a case that the property remain undivided. At first the clan chief allotted to each *gennete* his daily task.<sup>2</sup> But, as the clan increased in size, it became impossible for one man to supervise personally the details of labor. Then the lands were divided into lots and distributed among the *gennetae* to hold and cultivate for one or more years. This lasted among the Germans down into historic times.<sup>3</sup> It continues to some extent in India to-day.<sup>4</sup> Yet in earliest times, the houses, with the small lots on which they stood, must have been assigned to the permanent use of individual proprietors.<sup>5</sup> This was favored by religion; and where house-worship was in the ascendancy, there we find the gentile lands divided earliest among the *gennetae*. Thus in Rome, Greece, and generally in India, private ownership came in early. We are not to think of the house as enjoying absolute ownership of the soil. This still rested with the gens as a whole;<sup>6</sup> and in late Athenian history the notion prevailed that the estate belonged to the cognate family,<sup>7</sup> which after Solon was the representative of the gens.<sup>8</sup> No man was allowed to alienate his land in favor of one outside the gens,<sup>9</sup> and in case of failure of heirs within the house or cognate family,

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<sup>1</sup> Maine, *Early Law and Custom*, p. 219 ff.; Mommsen, *History of Rome*, I. pp. 93-4, ch. V. Reference is made here to the development of the earliest gentes from the isolated patriarchal family. New gentes were continually formed thereafter by the breaking up of an older gens into its component families.

<sup>2</sup> Maine, *Early Law and Custom*, p. 245 ff. It is this phase of development which is represented by the South-Slavonic House-Community of to-day. In the absence of clan autonomy there is nothing to foster the growth of large communities, *i. e.*, small households find sufficient protection in the *bratstvo* and *pleme*.

<sup>3</sup> Caesar, *Bel. Gal.*, VI. 22.

<sup>4</sup> Hearn, *Aryan Household*, p. 216.

<sup>5</sup> *Id.* pp. 226-7, 219.

<sup>6</sup> Hearn, *Aryan Household*, p. 212.

<sup>7</sup> Isaeus, III. 64, 61-2.

<sup>8</sup> Philippi, *Geschichte des att. Bürgerrechts*, pp. 190-2.

<sup>9</sup> Plutarch, *Solon*, 21.



his property reverted to the *gennetae*.<sup>1</sup> The actual reason for retaining this property within the gens was undoubtedly the fact that it belonged originally to the entire body. *Themis* set its sanction upon the fact by declaring that it was essential to the perpetuity of the gentile worship.<sup>2</sup> There are certain instances when property must be alienated. One is in case of composition for the blood-feud. Here the collective *gennetae* are concerned, and the blood-money belongs to the gens as a whole. Also, when a daughter is given in marriage to one of another clan, the *gennetae* must be consulted. After the custom of dotation had arisen, the inalienable nature of property must have in general restricted marriage to the gens.<sup>3</sup>

Each gens dwelt apart in a village in the midst of its arable fields and pasture lands.<sup>4</sup> Within it was the village hall (Gk. *λίσχη*), which contained the sacred hearth of the commonwealth, and in which the *gennetae* assembled under their leader for deliberation.<sup>5</sup> It was also a place of amusement, and in Homer is mentioned along with the smithy as a gathering place for idlers.<sup>6</sup> The village had also its sacred tree, in which the gods dwelt and enjoyed the rustling of the leaves.<sup>7</sup> Under

<sup>1</sup> Institutes of Vishnu, XVII. 4-11; Manu, IX. 187; Baudhâya, I. 5, 11, 11-12; Gautama, XXVIII. 21.

<sup>2</sup> It is everywhere the understanding that the householder must acquire property for the maintenance of the members of the household, including guests and gods. That this idea is extended to the clan and city is inferred from the general principle, "*do ut des*," which controls archaic man in all his relations to the gods.

<sup>3</sup> Just as it afterwards tended to restrict marriage to the cognate family. "In addition to this, I did not give my daughter in marriage to a stranger, but to my own brother's son, so that, if they lived and had their health, their children might also be of the kindred of Hagnias. Such were the measures I adopted, in order that the families descended from Buselus might in the fullest possible way be preserved"; Demosthenes, XLIII. 74.

<sup>4</sup> Leist, Graeco-italische Rechtsgeschichte, p. 103 ff.; Altarisches Jus Gentium, p. 24 ff.

<sup>5</sup> Leist, Graeco-italische Rechtsgeschichte, p. 104.

<sup>6</sup> Od. XVIII. 328-9; Hesiod, Works and Days, 491-9.

<sup>7</sup> Leist, Altarisches Jus Gentium, pp. 29-30. In the court of every South-Slavonian house stood a tree under which the family council was accustomed to meet in summer.

this tree the villagers met in their judicial capacity, and the gods were thus made witnesses of the oaths.<sup>1</sup> A parent, a beggar and an oath had each a curse as an instrument of defense.<sup>2</sup> The man who committed perjury could never rest, being goaded continually by this curse. Hence we may understand the wonderful efficiency of the oath under the gentile organization.

The village was located, when possible, on a hill for the sake both of health and defence.<sup>3</sup> It was fortified by walls, especially where exposed to attack.<sup>4</sup> Unwalled villages also occurred.<sup>5</sup> The possessors of hearths (*ἐφίστιοι*) were the only members of the community,<sup>6</sup> and originally composed the army.<sup>7</sup> There were clients most certainly even before the separation of the races. These were probably Aryans who had lost their own gentile connection, through war or other means. They were allowed to occupy portions of the village domain, paying to its owners one sixth of the produce, whence they were called *ἐκτῆμοροι* (Sk. *shānnivartani*).<sup>8</sup> The *ἐκτῆμορος* received from his patron a pair of steers to plow with. These he must not work in the heat of the sun, nor bore their noses, nor drive them with a goad but with gentle words.<sup>9</sup> The client must also perform military service when required.<sup>10</sup> As in the family, the eldest son represents his father in authority, so in the gens was the leadership originally hereditary. The ruler was called *pater*,<sup>11</sup> and represented the ancestor of the gens by direct de-

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<sup>1</sup> Leist, *Altarisches Jus Gentium*, pp. 29-30.

<sup>2</sup> Leist, *Graeco-italische Rechtsgeschichte*, pp. 226-7.

<sup>3</sup> Manu, VII. 71.

<sup>4</sup> Hearn, *Aryan Household*, p. 221.

<sup>5</sup> Thucydides, I. 5-6.

<sup>6</sup> Leist, *Altarisches Jus Gentium*, pp. 88-9.

<sup>7</sup> Iliad, II. 125. The army both in Greece and Rome was based on the gentile organization of the state. This did not exclude the military service of clients.

<sup>8</sup> Baudhāyana, III. 2, 1-2.

<sup>9</sup> Id. 2, 3.

<sup>10</sup> Leist, *Altarisches Jus Gentium*, pp. 448-9; Ihne, *Early Rome*, p. 112.

<sup>11</sup> Schrader, *Sprachvergleichung und Urgeschichte*, pp. 578-9.

scent according to the law of primogeniture.<sup>1</sup> However, as in the family, the elder held authority by his merit only,<sup>2</sup> so in the gens hereditary right was of itself insufficient. The consent of the *gennetae* alone could make the leadership lawful. This amounted virtually to election. Yet *Themis* favored the conservation of hereditary rights for the family if not for the individual<sup>3</sup>. In an age when personal merit counted for everything it was essential that the office should be filled by a man of strength, bravery and natural ability. Thus it often happened that the son was set aside in favor of the deceased father's brother.<sup>4</sup> The same principle finally threw the office open to all the *gennetae*. The natural basis of the clan-chief's authority was the assent of the *gennetae* to his hereditary claim, or in later times their free choice and election. But this alone counted for little in those early times. The all important source of his power is to be found in the religious view of his position as priest at the gentile hearth.<sup>5</sup> This gave him the *patria potestas* over the larger gentile family. Accordingly, he was leader of the gentile army, chief executive officer, judge and priest. It was his duty to protect all under his authority, and to preserve peace within the gens.<sup>6</sup> In return, the *gennetae* never failed to render to their chief the strictest obedience, and to manifest toward him the sincerest love and devotion, willing to sacrifice their lives even for his sake.<sup>7</sup>

Notwithstanding this, the clan-chief was by no means an absolute ruler. The spirit of the gens was intensely democratic, the *gennetae* being consulted on all matters of impor-

<sup>1</sup> Maine, *Early Law and Custom*, p. 247 f.; Hearn, *Aryan Household*, p. 145.

<sup>2</sup> *Manu*, IX. 110.

<sup>3</sup> Hearn, *Aryan Household*, pp. 145-6.

<sup>4</sup> Maine, *Early Law and Custom*, p. 248.

<sup>5</sup> "Rulers derive their honor from the common hearth, whether their title be archon or king or prytanis." Aristotle, *Politics*, p. 1322 b, 28.

<sup>6</sup> Howard, *Development of the King's Peace and English Peace-Magistracy*, pp. 5-6.

<sup>7</sup> Hearn, *Aryan Household*, p. 201.

tance.<sup>1</sup> Frequent meetings were held in the *lesche*, public affairs were discussed and the will of the assembly, not that of the chief, was sovereign. There could have been in Aryan times little formality in these proceedings, — no vote was taken and the idea that the majority was right had not yet come into existence.<sup>2</sup> No doubt the chief and leading *gennetae* expressed their opinions, and the decision reached by acclamation was accepted as god-given, just as later in the tribal *agora*. The ties of religion and blood fostered unity in the gens, while the instinct of self-preservation and the intense hatred of everything and every person outside of their own gens bound the members much more closely together.

From the standpoint of nature, the gens existed for the lasting and mutual advantage of its members,<sup>3</sup> especially for preservation of peace and happiness within its borders, and for defense and aggression against external foes. The gentile organization and institutions were admirably adapted to the furtherance of these ends. But in addition to the necessities imposed by natural circumstances, the *gennetae* acted from the deepest religious convictions. They were descended, as they at least believed, from a common ancestor,<sup>4</sup> who was now a god, and whom they must worship according to certain secret formulae. This deity, if properly supplicated, was their friend and preserver and an enemy to all outsiders. Besides the divine ancestor (eponymous hero), they came to have many other gods; some of them deified men, others personified forces of nature. Yet all these belonged exclusively to the gens and formed one corporate body with it.<sup>5</sup> Thus the

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<sup>1</sup> This has been sufficiently shown by Morgan, *Ancient Society*.

<sup>2</sup> Leist, *Graeco-italische Rechtsgeschichte*, p. 133.

<sup>3</sup> Aristotle, *Politics*, I. 2; cf. above, pp. 1-2.

<sup>4</sup> McLennan, *Patriarchal Theory*, p. 206.

<sup>5</sup> Hearn, *Aryan Household*, pp. 5-6. "Nature-worship developed under the influence of entirely analogous conceptions to those of ancestor-worship. When powers of nature, in the higher development of nature-worship, were made patron gods, were addressed with titles of relationship. (e.g. "father"), were viewed as ancestors of royal families, and otherwise as relatives of the citizen class (in the

common tie of blood and religion was nearly as close as that which bound together the members of the family. Within the village was harmony; in the world without, man found none but his natural enemies. The village was the only fatherland known to archaic man. In it he lived and moved and had his being. Its boundaries marked the limits of his obligations and sympathies,—enclosed the sphere of his moral activity.<sup>1</sup> Within the gens he was law-abiding, honoring the gods, his parents and rulers, refraining from bloodshed, from another's property, from breaking his oath; beyond this narrow sphere he was, from our point of view, a thief, a robber, a murderer, a perjurer.<sup>2</sup> Thus the gentile institutions developed the noblest sentiment and strictest morality, yet confined them to these exceedingly narrow limits. Long after the separation of the races the gens maintained these institutions and remained virtually autonomous. Even when phratries were formed, when tribe-kings were elected, when the *polis* (*civitas*) arose from the union of tribes, the gens clung doggedly to its time-honored prerogatives.

The earliest idea of law was the command of the house-father, resting for its authority during the *Rta* period on the order of nature, and afterward receiving its sanction from religion. There was no connection between penalties applied to similar cases except that supplied by the memory.<sup>3</sup> Thus, similar cases came to be tried in a similar manner, whence arose the customs of the house, by which even the *pater* was bound. The starting point of gentile customs was, in like manner, the command of a clan-chief, on consultation with the

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strictest aristocratic sense), and members of the blood-community even when this was becoming merely a legal fiction, we see the continuance of these analogies and limitations, though only in the shadow"; Professor B. I. Wheeler. Cf. above, pp. 30-1.

<sup>1</sup> Id.

<sup>2</sup> All this appears from Leist's discussion of the nine commandments; *Altarisches Jus Gentium*, p. 174 ff. The ordinary relation of gens to gens is a relation of hostility; McLennan, *Studies in Ancient History*, p. 72 f.

<sup>3</sup> Maine, *Ancient Law*, pp. 4-5.

*gennetae*, clothed also with the sanctity of religion. But the usages of the gens ran parallel with those of the house. The same principle applies to each higher group. The customs of the gens regulated religious duties, ownership and disposition of property, private and public rights of the *gennetae*, punishment of crimes and minor offenses, and everything, in brief, which pertained to the welfare of the gens and its members.

A consideration of all these customs belongs to the history of law rather than to the subject now before us. I desire merely to speak of the nine commandments, (as formulated by Leist)<sup>1</sup> which served as the foundation of religion and morals, and which were respected and conscientiously obeyed by the Aryans. There are two groups of these : (1) the four religious, (2) the five moral commandments.

#### FIRST GROUP:

1. Thou shalt honor the gods.
2. Thou shalt honor thy parents.
3. Thou shalt honor thy country.
4. Thou shalt honor the guest and the man needing protection.

Leist has observed that the questions asked the candidates for office at Athens in their *docimasy*, or trial of probation, concerned the keeping of the first three, viz:

1. *εἰ ἱερὰ πατρῷά ἐστιν* (if he performs his ancestral worship).
2. *εἰ γονέας εὖ ποιεῖ* (if he treats his parents well).
3. *εἰ τὰς στρατείας ὑπὲρ τῆς πόλεως ἐστράτευται, εἰ τὰ τέλη τελεῖ* (if he performs his military duties in defense of the state and pays his taxes).

The fourth commandment is not here included because there was little occasion in the developed state for the exercise of the virtue enjoined. The day of the suppliant had passed

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<sup>1</sup> Altarisches Jus Gentium, p. 172 ff. These commandments were not peculiar to the Aryans, but belonged to the Egyptians and Hebrews as well. I have followed Leist's formulation for the sake of clearness.

away, and the customs of private revenge and inter-gentile warfare had given away to the reign of peace and law within the large territory governed by the city. In Aryan times this commandment was as sacred as the others and of nearly as frequent application. The feeling of humanity and pity for the distressed and helpless is as old as the human race, subsisting therefore even in the *Rta* period of history. Here, also, *Themis* works a transformation, and the instinct of sympathy inherent in man's nature is, in the *Dharma* period, clad in the holiness of religion. Accordingly, it was the sacred duty of the householder to entertain the guest with the best food and comfort of the house, to be liberal toward the beggar, and to shelter the suppliant at his hearth against pursuers, greedy for his blood. Much has already been said about the honor due to parents. We observe now that it is on a level with the honor due to the gods. The most horrible crime known to archaic man was parricide, which was absolutely unpardonable either in this world or in the next. One guilty of this offense, even if he should escape punishment at the hands of relatives, became an outcast from society and religion, goaded to frenzy and even to self-destruction by the avenging curse of the murdered parent. In later times, after much agitation of the minds of men, it was settled that even such crimes, if unintentional or justifiable, were capable of atonement ; yet this was far from the primitive view.

SECOND GROUP :

5. Thou shalt keep thyself pure.
6. Thou shalt not give way to thy sensual nature.
7. Thou shalt not kill.
8. Thou shalt not steal.
9. Thou shalt not lie.

The fifth commandment refers alike to physical and moral purity. Violation of the seventh is justifiable in defense of self, kinsman or property. Yet even here it brings guilt and requires expiation. Perhaps of even greater interest to us is

the institution of vengeance in case of bloodshed. It is supposed that within the gens men are restrained from homicide through fear of the gods and the curse of the murdered party. When any such crime occurred, it naturally led to another homicide in retaliation. Yet this, too, was a crime requiring atonement in blood ; for it was committed against a kinsman. Thus one crime within the family was the beginning of a long series of horrible acts, which ended naturally only in the ruin of the house itself. For the prevention of this, as well as of minor offenses, a court was established within the gens, under the jurisdiction of which the blood-feud was restricted so far as practicable. But between the gentes, the blood-feud raged without this interruption. If the bloodshed was committed by a member of another gens, the wrong was, in the natural order of things, wiped out in war. After a time, such cases might be settled by arbitration, the gens of the injured or slain accepting a sum of money judged as an equivalent of the wrong, in place of the original blood-revenge. When it came about that several gentes were united in the phratry, the obligations of the blood-feud extended to the phrateres, and arbitration between the gentes of a phratry became the rule. It was not till late in history, however, that arbitrators acquired the authority to enforce their decisions.<sup>1</sup>

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<sup>1</sup> Howard, *Development of the King's Peace*, p. 5 ff.; Leist, *Altarisches Jus Gentium*, p. 421 ff.



### CHAPTER III.

#### THE GRECIAN GEN8.

##### (a) *The Family before Solon.*

A casual reading of Homer does not yield convincing evidence of ancestor-worship in the society represented by his poems, and some, accordingly, as Schrader, have concluded that the development of this form of religion belongs to a later period of Grecian history, — that represented in Attic literature by the dramatic poets and the orators.<sup>1</sup> The testimony, however, of prehistoric monuments in the Peloponnesus, Attica, and elsewhere in Greece establishes conclusively the fact of ancestor-worship for the primitive Greeks.<sup>2</sup> Rohde<sup>3</sup> has collected and systematized the facts bearing on the question at issue; and it is now possible to trace the history of this form of worship on Greek ground with considerable certainty and precision.

1. In primitive Greece the custom of burial prevailed.<sup>4</sup> A burnt offering was first made in the tomb, and the body was then laid to rest above the ashes.<sup>5</sup> The dearest treasures of the deceased, — his gold, ornaments, and implements, — were buried with him.<sup>6</sup> The poor were treated in death as the rich,<sup>7</sup> so far as the means of their living kinsmen allowed. Women as well as men received after death the honors of burial and worship.<sup>8</sup> An offering of a sheep or goat was made to the dead

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<sup>1</sup> Schrader, *Sprachvergleichung und Urgeschichte*, pp. 613-5.

<sup>2</sup> See p. 24, n. 1.

<sup>3</sup> In his lately published "*Psyche*."

<sup>4</sup> Rohde, *Psyche*, p. 31.

<sup>5</sup> Id. pp. 31-2.

<sup>6</sup> Id. p. 32.

<sup>7</sup> Tombs of common people have been discovered at Nauplia in Attica; id. p. 31.

<sup>8</sup> Id. p. 31; e. g., princesses of Mycenae.

within the tomb before closing it.<sup>1</sup> Then an altar, in the form of a hearth, was erected above the tomb for further sacrifices.<sup>2</sup> People who maintained these customs must have believed that the soul of the deceased remained near the body, enjoyed the sacrifices and the possession of treasures, and was capable of greatly benefitting or injuring its living friends and kinsmen.<sup>3</sup> The living were prompted in their relations with the dead by the desire to avert the anger of the latter and to win their favor. Treasures were buried with the dead probably to render the tomb an attractive dwelling place for the disembodied soul, — that it might have the less occasion for vexing the living with its presence.<sup>4</sup>

2. In the course of time, ancestor-worship declined in Greece. While the fact of such a decline is beyond question,<sup>5</sup> the forces which brought it about have not been satisfactorily determined.<sup>6</sup> The stage of decline now to be considered is that represented in literature by the poems of Hesiod.<sup>7</sup> We find in Hesiod the belief that men of the first, or golden age, dying as if overcome by sleep, were changed into *daemons*<sup>8</sup> by the will of Zeus. These, 30,000 in number, wander over the earth, veiled in

<sup>1</sup> Remains of sheep and goats have been found in the tombs at Nauplia in Attica; id. p. 32.

<sup>2</sup> Such an altar has been found above one of the tombs in Mycenae; Schliemann, *Mycenae*, pp. 213–14; Rohde, *op. cit.*, p. 33.

<sup>3</sup> Otherwise, the living would have had no motive for burying with the deceased so much wealth and offering such costly sacrifices; cf. above given references.

<sup>4</sup> Hdt. V. 92 f.; Rohde, *op. cit.*, p. 32.

<sup>5</sup> Rohde, *op. cit.*, pp. 147–8.

<sup>6</sup> The most prominent force to which Rohde has called attention is the general unsettlement of Greece connected with the Dorian migration. A tribe in leaving the tombs of its ancestors must leave also in great part its ancestral worship behind it. Nomadic people and, we may add, people who, even though settled, are uncertain of the future, are accustomed to burn rather than to bury the body that it may not fall into the hands of enemies. Moreover, the custom of burning tends to destroy belief in the continued influence of disembodied spirits upon the living, as will appear from the following discussion.

<sup>7</sup> That Hesiod represents a less advanced stage of decline than Homer is made evident by Rohde, *op. cit.*, pp. 147–8, 92.

<sup>8</sup> Deified men, — used only in this sense in Hesiod; Rohde, *op. cit.*, p. 91.

clouds,<sup>1</sup> observing the just and unjust deeds of men.<sup>2</sup> Men of the golden age were endowed with great virtue.<sup>3</sup> Those of the second, or silver age were gifted with less merit, yet they too were honored after death.<sup>4</sup> But in Hesiod's day, deification of the dead had ceased, and remembrances only of the custom had come down to him from ages past. The souls of those who died in his time all went, as was believed, to Hades.<sup>5</sup> Thus in the Boeotia of Hesiod ancestor-worship survived, and exercised a moral influence upon society.<sup>6</sup>

3. In the society represented by the Homeric poems ancestor-worship reached its final stage of decline.<sup>7</sup> Burning now became prevalent. The object of burning was to set the spirit free that it might depart as quickly as possible to Hades.<sup>8</sup> Until this ceremony was performed the soul could not rest<sup>9</sup> and was an object of terror to the living lest it should bring upon them the anger of the gods.<sup>10</sup> Offerings of honey, oil, and wine were made to the dead at the funeral pyre.<sup>11</sup> Sheep, oxen, horses, the dogs of the deceased, and even human beings were slain and placed upon the pile.<sup>12</sup> The mourners also offered their hair.<sup>13</sup> Then followed athletic contests in honor of the

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<sup>1</sup> i. e., invisible.

<sup>2</sup> Works and Days, 252 ff.; Rohde, *op. cit.*, p. 91.

<sup>3</sup> Works and Days, 122 f.

<sup>4</sup> Id. 142; Rohde, *op. cit.*, p. 93.

<sup>5</sup> Rohde, *op. cit.*, pp. 101-2.

<sup>6</sup> The *daemons* discerned right from wrong, probably rewarding the good and punishing the bad.

<sup>7</sup> For causes of further decline, see Rohde, *op. cit.*, p. 36 ff. Among the causes were (1) migrations to Asia Minor, (2) Pan-Hellenic spirit of Homer—avoidance of the local and the exceptional, (3) idea of a well regulated universe—*κόσμος*—to which the idea of local deities is antagonistic, (4) tendency to regard mental attributes as abstract entities, (5) æsthetic and poetical reasons,—Homer did not introduce into his poems all the beliefs and customs of the people, since his taste or his poetical motives would not allow it.

<sup>8</sup> Od. XI. 218 ff.; Rohde, *op. cit.*, p. 29.

<sup>9</sup> See p. 45 and n. 3.

<sup>10</sup> Od. XI. 72-76.

<sup>11</sup> Iliad, XXIII. 218-222; Od. XXIV. 67-8; Rohde, *op. cit.*, pp. 15-16.

<sup>12</sup> Iliad, XXIII. 166 ff.

<sup>13</sup> Rohde, *op. cit.*, p. 16.

deceased.<sup>1</sup> The soul after separation from the body dwelt in Hades as a mere shadow without the power of will, thought, or feeling,<sup>2</sup>—without influence therefore upon the world of life. Apart from the ceremonies of burning and the fear of a soul still lingering on earth, Homer knows nothing of an ancestor-worship,<sup>3</sup> while furnishing abundant evidence of its existence in earlier times.

4. It is likely that Attica, being less disturbed than Boeotia by the general unsettlement of Greece attendant upon the Dorian migration, maintained her custom of ancestor-worship with more stability than Boeotia or the Ionic world of Homer. While there may have taken place in Attica a certain decline and subsequent revival, we are unable through lack of data to trace the history of the movement. As early as Draco provision was made by law for the maintenance of this form of worship.<sup>4</sup> While nothing is known of it before Draco, we are warranted by the evidence which the monuments above considered afford, in affirming its existence from the remotest period of Attic history. The object of Draco's ordinance therefore was not to regulate a new institution, but rather to give legal sanction to a religion far older than the Grecian race itself.

What is the practical bearing of this discussion, — has it any reference to the development of the Athenian constitution? For a sufficient answer to this question it is only necessary to bear in mind that each group in the gentile organization of the Greek state, from gens upwards, is patterned, in its religious, legal, and political institutions, after the group below it, that finally the Greek state is, in its institutions, an enlarged family. If, then, the Athenian family was from the remotest ages dominated by principles based upon ancestor-worship, certainly this fact is of the utmost value for the correct appreciation of the Athenian government.

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<sup>1</sup> *Iliad*, XXIII. 274, 646.

<sup>2</sup> Rohde, *Psyche*, p. 4.

<sup>3</sup> *Id.* p. 9.

<sup>4</sup> *Cf. id.* p. 137.

It is unnecessary to consider the Homeric family in detail, since it is but the Aryan family transplanted to Greek soil with the changes which a few centuries bring.<sup>1</sup> I desire merely to call attention to the more important institutions of the early Greek family and gens.

The father gave his daughter in marriage,<sup>2</sup> generally with a dowry,<sup>3</sup> receiving the *eedna* of the wooer.<sup>4</sup> The son was also said to be given by the father.<sup>5</sup> Among the marriage ceremonies were the bridal procession and marriage feast as of old.<sup>6</sup> The poet had no occasion to mention all the ceremonies which may then have existed. The greatest blessings which the gods could bestow upon man were offspring, especially sons.<sup>7</sup> Parents cared most tenderly for their children, and in return enjoyed the *gerotrophy*, which was then called *threptia*,<sup>8</sup> with which the *nomizomena* were connected as a matter of course. The sacredness of these obligations is shown by the fact that a child who neglected his duty to his parent was subject to the vengeance of the *erinyes*<sup>9</sup> of that parent. On the other hand, the father's authority did not continue through life. It was even the custom of aged kings to resign their throne in favor of their sons who were in the prime of life, and thus more capable of rule.<sup>10</sup> Brothers divided the patrimony equally, allowing to the illegitimate brother a smaller share,<sup>11</sup> as in India. There is no trace of an exclusive primogeniture, such as Fustel de Coulanges assumes for Attica in the pre-Solonian times.

<sup>1</sup> It must be remembered that social institutions develop incomparably more slowly than political institutions.

<sup>2</sup> *Iliad*, XIX. 291.

<sup>3</sup> *Id.* IX. 147.

<sup>4</sup> *Id.* XVI. 178.

<sup>5</sup> *Od.* IV. 10.

<sup>6</sup> *Iliad*, XVIII. 490 ff.

<sup>7</sup> *Id.* XXIV. 538 f.

<sup>8</sup> *Id.* IV. 478.

<sup>9</sup> *Od.* II. 130 ff.; O. Müller, *Aeschylus, Eumenides*, p. 165.

<sup>10</sup> *e.g.*, *Peleus and Laertes*.

<sup>11</sup> *Od.* XIV. 209 f.; Grote (small edition), I. p. 334, (large edition) II. p. 25.

Roman agnation did not exist. Outside of the house, relationship was reckoned through females as well as males, the latter merely taking precedence. In some cases, connection through the mother seems the stronger and more sacred tie.<sup>1</sup> Relationship through marriage was regarded as second only to that through blood.<sup>2</sup> Obligations of the blood-feud rested also upon kinsmen through females.<sup>3</sup>

The character of the family is indicated most accurately by the position which woman occupied.<sup>4</sup> Her condition was materially improved by the rise of monarchies, in which woman naturally plays an important part. We find them in Homeric Greece enjoying *de facto* complete liberty. Arete goes on foot through the street and is greeted kindly and respectfully by whomsoever she meets.<sup>5</sup> Her daughter, Nausicaa, goes about at pleasure, sometimes accompanied by female servants,<sup>6</sup> sometimes alone.<sup>7</sup>

While the government of the family remained monarchical with the father as king, the mother was joined with him in the rule of the household. Her intellectual equality is proved by the fact that her advice was sought in everything of interest to

<sup>1</sup> Iliad, III. 236 ff.; XIX. 293 ff.; and, especially, XXIV. 45 ff.

<sup>2</sup> Od. VIII. 581 ff.: "Hadst thou even a kinsman by marriage that fell before Ilium, a true man, a daughter's husband or wife's father, such as are nearest to us after our own stock and blood?" See also the list of relations by affinity collected by Gladstone, *Homer and the Homeric Age*, II. p. 492.

<sup>3</sup> Iliad, II. 653 ff. Tlepolemus, son of Hercules, slays the maternal uncle of his father, and flees the country, threatened by the sons and grand-sons of Hercules. Hearn refuses to accept this testimony, since it conflicts with his theory. Yet it accords with Od. VIII. 582 and whatever else we know of Homeric kinship. On the other hand, McLennan is wrong in testing Greek kinship by reference to the Lycians (Iliad, VI. 150 ff.) and to the Trojans; *Studies in Ancient History*, pp. 232, 202-3.

<sup>4</sup> "Der beste Masstab für die Sittlichkeit einer jeden Nation ist das Weib und das Verhalten des Mannes zu ihr"; Zimmer, *Altindisches Leben*, p. 331.

<sup>5</sup> Od. VII. 66 ff.

<sup>6</sup> Od. VI.

<sup>7</sup> Mahaffy, *Social Life in Greece*, p. 53. That this freedom was enjoyed also by women of inferior rank is seen from Il. XX. 251 ff.; Od. XVIII. 27.

the family.<sup>1</sup> The wife, indeed, possessed more actual influence than her husband, the latter ordinarily being content with a merely nominal supremacy. Thus, Arete decides to give aid to the suppliant Odysseus. The nobles approve the decision, but ask for the assent of Alcinoüs, their chief, who says: "Yea, the word which she hath spoken shall hold, if, indeed, I am yet to live and bear rule among the Phaeacians, masters of the oar."<sup>2</sup> So in the Olympian Council the goddesses Athena, Here, etc., virtually control affairs; while Zeus is little more than a figure-head. Nor are there wanting cases where a woman was *de jure* supreme. The mother of Andromache was queen, (*βασίλευν*) in Hypoplacian Thebes;<sup>3</sup> Lemnos was ruled by Hypsipyle,<sup>4</sup> and Pylos, in former times, by Chloris.<sup>5</sup> Clytemnestra and Penelope had charge of their husbands' realms during their absence. It would be absurd to suppose that either of these had a legal guardian. That this elevation of woman belonged to Attica, also, is in itself probable; and is confirmed by the legend cited by McLennan,<sup>6</sup> according to which women in Athens possessed the right of suffrage before Cecrops and ruled the state, being in the majority. It is quite possible that there may be a grain of truth in this, for the women of Attica were certainly of far greater political importance in earlier than in later times.

The poet's ideal of married life was as high as that of the moderns.<sup>7</sup> The *cedna* of the wooer was now only an indication of esteem; and did not secure to the giver the powers of life,

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<sup>1</sup> There is no need of citing special cases, since the fact is prominent in nearly every dialogue between husband and wife. See Gladstone, *Homer and the Homeric Age*, II. p. 509.

<sup>2</sup> *Od.* XI. 335 ff.

<sup>3</sup> *Iliad*, VI. 425.

<sup>4</sup> *Id.* VII. 468-9.

<sup>5</sup> *Od.* XI. 254 ff., 281 ff.

<sup>6</sup> *Studies in Ancient History*, pp. 234-6, from Varro in *August. de Civ. Dei*, XVIII. 9.

<sup>7</sup> Mahaffy, *Social Life in Greece*, p. 52.

death, and sale.<sup>1</sup> In the court of Menelaus, Helen was the central figure. It is impossible to speak of equality here,—the wife was distinctly superior. The respect of children for their mother is everywhere noticeable, as is indicated by the phrase ‘πότνια μήτηρ.’ The Cretans and Messenians were accustomed to call their country “motherland,”<sup>2</sup> out of respect and love for the mother, while colonists always spoke of their parent city as the *μητρόπολις*.

The Spartans, who preserved the early institutions most nearly in their integrity, maintained the ancient respect for women. Spartan youths were stimulated to manly conduct by the presence and praise of their maiden friends; while mothers continued through life to exercise a directing influence upon their sons.<sup>3</sup>

The Cretan family, as represented in the law-code of Gortyn,<sup>4</sup> is in all essential respects similar to that described above. There was in Gortyn the same gentile organization of the state which we meet with every where in Greece. The city was divided into *phylae* and phratries (here termed *ἐταιρείαι*).<sup>5</sup> *Phyle* and phratry were organic groups of kinsmen<sup>6</sup> and the latter at least was, like the Attic phratry, a religious association having charge also of adoption and other matters affecting the social and civil status of the individual.<sup>7</sup> The Cretan house-

<sup>1</sup> Müller's Handbuch, IV. p. 446 b; E. Hruza, Beiträge zur Geschichte des griech. und römisch. Familienrechts, I.

<sup>2</sup> McLennan, Studies in Ancient History, p. 236.

<sup>3</sup> Müller's Dorians, II. p. 290 ff.; Donaldson, Contemporary Review, XXXII. pp. 647-64. Aristotle says that the Spartan women ruled the state, and were themselves without restraint; Politics, II. 9. 4-13 (pp. 1269 b—1270 a). Donaldson's treatise together with McLennan, Studies in Ancient History, Mahaffy, Social Life in Greece, chs. II and III, Gladstone, Homer and the Homeric Age, II. pp. 479-520, and Buchholz, Die homerischen Realien, II. 2. pp. 1-38, are of great value in forming an estimate of the Homeric family.

<sup>4</sup> Bücheler and Zitelmann, Das Recht von Gortyn, has been used, in which Zitelmann's "Juristische Erläuterungen," pp. 41-178, have been found very valuable.

<sup>5</sup> Id. VII, VIII, X, and p. 55.

<sup>6</sup> Id. p. 55.

<sup>7</sup> Id. X. 37-9.



hold included parents and children, property and slaves. The family lived, so far as practicable, in the city, that those of its members who were qualified might take part in governmental affairs.<sup>1</sup> While the householder in Gortyn, as elsewhere among the Aryans, is to be regarded as head of the family,<sup>2</sup> the wife enjoyed a remarkable degree of indulgence. Although represented in court by her husband or nearest kinsman in blood,<sup>3</sup> she was allowed to inherit, possess, and manage property.<sup>4</sup> The householder had no right to sell or pawn the separate property of his wife.<sup>5</sup> The law of inheritance was as follows:

The property of father or mother goes, at death, to

(1) children, (2) grandchildren, (3) great-grandchildren.

If these fail, to

(1) brothers of deceased, (2) their children, (3) their grandchildren.

If these fail, to

(1) sisters of the deceased, (2) their children, (3) their grandchildren.

If these fail, to

relatives of whatever degree.

If these fail, to

the slaves (clients) of the house.<sup>6</sup>

An heiress was under obligation to marry her nearest kinsman. But if no kinsman was available, she might choose a hus-

<sup>1</sup> Bücheler und Zitelmann, *Das Recht von Gortyn*, p. 139.

<sup>2</sup> *Id.* p. 109.

<sup>3</sup> *Id.* p. 61.

<sup>4</sup> On inheritance, *id.* V (for same privileges in Delphi and Tenos, see Thalheim, *Griech. Rechtsalterthümer*, p. 56, n. 1); on possession, p. 117, n. 42; on management, VI. 9 ff., 32 ff., and IV. 26 ff.

<sup>5</sup> *Id.* p. 117. A husband or near kinsman was at liberty to kill an adulterer taken in the act. This points to the Aryan idea of purity and of the object of marriage; *id.* p. 103. The influence of the mother must have been great, as indicated by her legal privileges. See, also, p. 75 for the position of the Cretan mother.

<sup>6</sup> *Id.* pp. 143-4.

band from her *phyle*.<sup>1</sup> Every daughter not an heiress received as dowry or inheritance a certain portion of the estate fixed by law.<sup>2</sup> In case of childlessness, a son was adopted to inherit the property and perform for the adoptive father the *sacra* and all other duties connected with the house.<sup>3</sup> Clients (slaves of the higher class) tilled the fields of their lord for rent. These fields they inherited along with other property. In law they were represented by their lord, but their social condition was remarkably high<sup>4</sup> and in many respects they enjoyed practical independence. The lower class of slaves were in less favorable circumstances; yet there was nothing peculiar in their condition demanding special mention.

The Cretan household with its residence in the city, its slaves and its tenant clients dwelling apart in the country, tilling the fields of their lord, closely resembles the pre-Solonian Eupatrid family of Attica. The social and legal status of the client is apparently the same.<sup>5</sup> It does not appear that these tenants had once been free and had fallen into a species of serfdom; but rather that this had been their original condition, from which they were liberated, in Attica, by Solon. The Attic nobility was based not only upon blood but also upon the possession of landed property. The latter was an indication of autochthony, and therefore, of Eupatridism.

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<sup>1</sup> Bücheler und Zitelmann, *Das Recht von Gortyn*, p. 149 ff. If she is already married, the kinsman who has a claim may cause a separation; id. p. 154.

<sup>2</sup> Law of Gortyn, IV. 42 f.

<sup>3</sup> Id. X, XI.

<sup>4</sup> e.g., intermarriage with citizens was allowable.

<sup>5</sup> Cretan and Attic clients were alike in the following respects: they were represented before the courts by their lords; (2) they enjoyed no political privileges; (3) they tilled the lands of the nobility, paying a quota of the produce; (4) they were designated by practically identical terms, — in Gortyn, *παρόικοι*, *ἀγροικοί*; in Attica, *δωρικοί*, *ἀγροικοί*; (5) they were said to be in slavery, — in Gortyn the term *δῶλος* is constantly applied to them; in Attica, they were, in accordance with the oligarchic constitution, in slavery — *ἐδούλευον* — to the rich; Arist., *Ath. Pol.*, ch. 2; cf. Keil, *Die Solonische Verfassung in Aristoteles Verfassungsgeschichte Athens*, p. 15; also Erdmann, *Der Athenerstaat*, p. 18, n. 1.

There is no reason to doubt that the family as above set forth is, in the main, pan-Hellenic. Nothing, independent of this, is known of the Athenian family before Solon, except a few particulars gathered from his legislation. The main facts are as follows. 1. The motives to marriage were pure love, kind affection, and desire for children.<sup>1</sup> Plutarch has not here introduced the idea of his own age, since his view agrees with that of Homer<sup>2</sup> and the Hindoos.<sup>3</sup> 2. The husband shall consort with his wife thrice a month.<sup>4</sup> Solon was not the author of this law since it existed among the Hindoos in a similar form.<sup>5</sup> 3. On failure of heirs by the husband, an heiress may consort with her husband's nearest kinsman that an heir to the estate may be born. A kinsman rather than a stranger is chosen that the children may be of the same family.<sup>6</sup> 4. Large dowries were bestowed and marriages were often contracted for gain.<sup>7</sup> No mention is made of marriage by sale. This custom, therefore, must have fallen into disuse before Solon's time. 5. Women were allowed great liberties. They often walked about clad in costly garments and often traveled even in the night.<sup>8</sup> Aristotle tells us that "the wives of oligarchs are too fine to be controlled."<sup>9</sup> 6. The father could sell his unmarried sisters and daughters and minor sons. This point is taken as a proof of a *patria potestas* in its utmost severity.<sup>10</sup> That such an inference is unwarranted will immediately appear upon considering who were the men who were allowed such powers. There is not

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<sup>1</sup> Plutarch, Solon, 20.

<sup>2</sup> Od. VI. 173 ff.

<sup>3</sup> Manu, IX. 28.

<sup>4</sup> Plutarch, Solon, 20.

<sup>5</sup> Manu, IX. 4 ; Baudhâyana, IV. 1. 17.

<sup>6</sup> Plutarch, Solon, 20. That this law is older than Solon is shown by Manu, XI. 59, 171 ; Gautama, XVIII. 11. Solon was the author of but few of the laws attributed to him. Thus the *Niyoga* marriage was practised by the Spartans (Leist, Graeco-italische Rechtsgeschichte, p. 46), and by the Germans (id. p. 47).

<sup>7</sup> Plutarch, Solon, 20.

<sup>8</sup> Id. 21.

<sup>9</sup> Politics, IV. 15. 13 (p. 1300 a, 8).

<sup>10</sup> Fustel de Coulanges, Ancient City, pp. 111, 115.

the slightest evidence that a Eupatrid ever sold any of the members of his family. The persons mentioned as exercising this privilege were the *ἐκτρήμοροι*, or clients. The patron often sold his client into slavery, and many were in Solon's time serving in foreign lands. In such a state of things, it was but natural that the client should let his children go, if only it might free himself from the yoke. The Eupatrids, who were organized in *gentes*, and practised ancestor-worship, had strong motives for maintaining their houses, and rearing their children in freedom. The latter did not belong to the parents alone, but to the gens as well,<sup>1</sup> and could not have been sold without the consent of the *gennetae*. 7. The father could make no will. In failure of heirs within the family, the property went to the *anchisteis*; failing these to the *gennetae*.<sup>2</sup> This point shows that the father was not, in early Greece absolute proprietor. The property belonged first to the household, of which he was legal representative, next to the cognate family, and ultimately to the gens. The land became alienable, however, before Solon, by sale but not by bequest.<sup>3</sup> 8. Only legitimate children enjoyed the *anchisteia*—legal right of inheritance. From this we learn that family rights depended upon birth. Now, the state did not before Solon regard anyone as a genuine citizen who did not enjoy the *anchisteia*. There was not, therefore, one class of citizens enjoying the *politeia* and another, both *politeia* and *anchisteia*, these two terms having the same denotation. The pre-Solonian state was, accordingly, an enlarged family, and an individual who was excluded from the smaller unit, was excluded equally from the larger.<sup>4</sup> 9. The obligation to prosecute for personal

<sup>1</sup> The customs which regulate inheritance, marriage, blood-vengeance, etc., all point to this view.

<sup>2</sup> Plutarch, Solon, 21 ; Demosthenes, XX. 102.

<sup>3</sup> Aristotle, *Politeia* of the Athenians, ch. 6, shows that land might be bought and sold before Solon. See, also, Aristotle, *Politics*, II. 7 (p. 1266 b).

<sup>4</sup> H. Schenkl, *Zur Geschichte des attischen Bürgerrechts*, Wiener Studien, V. pp. 52-84 ; Philippi, *Beiträge zu einer Geschichte des attischen Bürgerrechts*, pp. 9, 14 ff.

- injury devolved upon the kin.<sup>1</sup> This corresponds perfectly with the other gentile customs. 10. Ancestor-worship was practised.<sup>2</sup> This is undoubtedly the basis upon which rest all the customs above enumerated. These were not brought into being by Solon, but are older than any individual legislator.

(b) *The Gens as a Whole.*

The house, as set forth in the preceding chapter, is a clearly defined body lying wholly within the gens.<sup>3</sup> This would be true even if exogamy were the rule instead of the exception.<sup>4</sup> The gens, accordingly, was composed of a number of houses, being itself no more than an enlarged house. The gens is taken as the smallest political unit simply because the state found it so thoroughly organized and presenting so firm and complete a defense about the whole circle of its privileges, that it remained impossible for many years to tear away these barriers, or to interfere in its internal affairs. As soon as the gens was dismembered, the family became, for the most part, the political unit.<sup>5</sup> The notion that the individual was

<sup>1</sup> Plutarch, Solon, 18; Aristotle, *Politeia* of the Athenians, ch. 9; Philippi, p. 193 f.

<sup>2</sup> Demosthenes, XLIII. 61, 66 f. Cf. Plutarch, Solon, 21.

<sup>3</sup> It is the mistake of Morgan (*Ancient Society*, pp. 215-225) and those of his view, to disregard the opinion of the ancients as to the structure of the gens, and to introduce into Grecian History generalizations from non-Aryan phenomena. The chapter on the Grecian gens in his "*Ancient Society*" has little value except as a warning to theorists. The fundamental differences between the Aryan race and other races render all analogies and comparisons extremely hazardous. I can hardly think that the study of the North American Indians or the savages of Africa will ever throw any light upon Grecian history.

<sup>4</sup> See examples of marriage between uncle and niece, aunt and nephew, occurring in the Homeric poems, collected by Gladstone, *Homer and the Homeric Age*, II. pp. 490-1. It does not appear that property considerations dictated these unions. Marriage of cousins must certainly have been far more numerous, and no restriction is mentioned save that of marriage between parent and child. Marriage of brother and sister was not unknown among the gods, *e. g.*, Zeus and Here.

<sup>5</sup> Philippi, *Beiträge zu einer Geschichte des attischen Bürgerrechts*, pp. 190-197.

free from his kin, and might, therefore, constitute an independent unit of the commonwealth found no practical working on Greek soil. Morgan has not personally investigated Grecian history, but takes Grote as an authority. In reliance, however, upon the statement of Grote,<sup>1</sup> we must decide against the prevalence of exogamy. It would, indeed, be absurd if the heiress must be kept within the gens, but all other daughters must be given to outsiders. If exogamy once existed, the law as to heiresses must soon have destroyed it. It often happened where there was a son and a daughter, that the son died without heirs before the daughter, the latter thus becoming an heiress. Now, if the daughter had been given into another gens the property must pass to another gens or the daughter be deprived of her rights. For certainly the nearest kinsman of the heiress could not hope to receive her back from another gens. The former was impossible owing to the inalienability of property. Providing against the latter alternative, the father must have preferred to give her in marriage to his *gennete* and, when possible, to one of his family, just as in later times.<sup>2</sup>

Grote states the chief features of the gens summarily, and it may be well to repeat what he has given :<sup>3</sup> "The basis of the whole was the house, hearth, or family — a number of which, greater or less, composed the gens or *genos*. This gens was therefore a clan, sept, or enlarged, and partly factitious, brotherhood, bound together by —

1. Common religious ceremonies, and exclusive privilege of priesthood in honor of the same god, supposed to be the primitive ancestor and characterized by a special surname.

2. By a common burial place.

3. By mutual rights of succession to property.

4. By reciprocal obligations of help, defense, and redress of injuries.

5. By mutual right and obligation to intermarry in certain

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<sup>1</sup> Ch. X (small edition), I. p. 560, (large ed.) II. p. 428.

<sup>2</sup> Demosthenes, XLIII. 74.

<sup>3</sup> Grote, *loc. cit.*

determinate cases, especially where there was an orphan-daughter or heiress.

6. By possession, in some cases at least, of common property,<sup>1</sup> an archon, and a treasurer of their own."

The deities which the *gentes* had in common were Apollo *Patrōūs* and Zeus *Herceius*.<sup>2</sup> This is an instance of the adoption of powers of nature as patron gods.<sup>3</sup> The original title "*pater*" as a designation of the chief had passed into that of *basileus*.<sup>4</sup> Aristotle<sup>5</sup> tells us that villagers are kinsmen and are ruled by kings because they are of one blood—a colony of the family. This accords with the new derivation of *basileus* from the Aryan word for "household" or "*gens*."<sup>6</sup> When the *gens* lost its autonomy the term *basileus* was dropped, and the clan-chief was known thereafter simply as the "*archon of the gens*."

The members of the *gens* were called *gennetae*, the term applying properly only to those of pure descent and full privilege, but made inaccurately to include the dependents of the *gens*.<sup>7</sup> The term *homogalaktes*<sup>8</sup>—"milk-brethren"—was applied exclusively to those of noble birth. It may signify "those nourished by the same milk," but more probably "those who offer the same milk in sacrifice." This term then is nearly equivalent to the Sanskrit *sapindas*—"those who offer the same cake," *i. e.*, members of the cognate group.<sup>9</sup>

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<sup>1</sup> William Ridgeway, *Journal of Hellenic Studies*, Vol. VI. (1885) pp. 319-339, has shown that in the Homeric Age the land occupied by the *gens* most probably belonged to the *gens* as a whole. Landwehr, *Philol.*, Supplb. V. p. 135, n. 49, has also observed that no sale of land has been mentioned by Homer.

<sup>2</sup> Müller's *Handbuch*, <sup>2</sup> IV. p. 206.

<sup>3</sup> See p. 63, n. 5.

<sup>4</sup> Gilbert, *Altattische Komenverfassung*, p. 209.

<sup>5</sup> *Politics*, I. 2 (p. 1252 b, 20).

<sup>6</sup> Schrader, *Sprachvergleichung und Urgeschichte*, p. 584 n., from *Bez. Beitr.* II. p. 174.

<sup>7</sup> Müller's *Handbuch*, <sup>2</sup> IV. p. 206, n. 6.

<sup>8</sup> Pollux, VI. 156.

<sup>9</sup> Hearn, *Aryan Household*, p. 171.

The clients of the gens had some share in the worship, and were called as such *orgeones*.<sup>1</sup> They were likewise under the protection of their noble brethren. This is seen in the treatment of homicide. If a man is slain, and has no near kinsman, a law of Draco provides that ten Eupatrid *phrateres* be selected to prosecute the murderer.<sup>2</sup> This law undoubtedly refers to a time when clientage existed, carrying with it this duty of the patron to defend and avenge the client in the same manner as the slave. Before Draco, the clients had no right to prosecute in their own name; but receiving through him an independent standing before the courts, they could now in their own name prosecute the slayer of a kinsman. It was, henceforth, only when the slain had no near kin that the Eupatrids of his phratry were under obligations to follow up the slayer.

In early Attic history, as in Aryan times, the gentes lived in villages, and were virtually autonomous. Each village had its *lesche*, or place of assembly, of all the villagers for the transaction of public business, as well as for amusement. Thucydides speaks of a *prytaneum* (king's house), and a *bouleuterium* (council chamber),<sup>3</sup> as belonging to the several independent cities of Attica. No difference probably existed between the village and city which he mentions except that of size. *Kome* and *polis* seem, indeed, to have been with him convertible terms. A large community was generally formed by the union of smaller communities, just as these latter had, no doubt, their own division into *demi*, or sub-villages. It is highly probable, then, that the *prytanea*, *bouleuteria* and most of the other institutions of the city — phratric or tribal — existed previously in the village. After the synoecism, the *lesche* was removed to Athens, partly for convenience, since the *gennetae*, from this time, came to be more and more widely dispersed, and could gather more easily in Athens than in their original village; and partly as an aid to centralization. In the *lesche* at Athens the

<sup>1</sup> Philippi, Geschichte d. att. Bürgerrechts, p. 204 f.; Müller's Hdb. <sup>2</sup> IV. p. 207 f.

<sup>2</sup> Demosthenes, XLIII. 57-8; corroborated by C. I. A., I. 61.

<sup>3</sup> Thucydides, II. 15.



*gennetae* continued through historical times to meet on stated occasions, to transact, under the presidency of their archon, the necessary business of the gens.<sup>1</sup> The *prytanea* and *bouleuteria* were transferred to Athens, and united in the one *prytaneum* and *bouleuterium* of the entire commonwealth.

The *gennetae* were, strictly speaking, only those of pure descent and lawful birth who had been properly initiated into the worship of the house, and, at the prescribed time, into the common rites of the gens. On the latter occasion, the collected *gennetae*, receiving the oath of the father that the candidate was indeed a genuine son, proceeded to vote on the acceptance of the candidate. If decided in the affirmative, the son shared in the religious feast, and (after writing had come into use) had his name inscribed in the gentile register (*grammateion*<sup>2</sup>). Daughters also were initiated into the phratry,<sup>3</sup> and probably, therefore, into the gens. Before Solon, the presence of a name in the register was legal proof of citizenship. After Solon, it indicated merely *εὐγένεια*, or noble birth, and all honors and privileges which the latter assured to the possessor.

The religious, moral, and legal ideas and institutions of the Greek gens were an outgrowth from the common possessions of the Aryan stock. It is unnecessary in this treatise to consider these in detail. It may be sufficient to state here that the Grecian gens maintained in their integrity the fundamental Aryan ideas of right and wrong, notwithstanding the influences of the Olympian worship and contact with the Orientals. In its religious ceremonies and ideals, in its free and martial spirit, and even in its exclusiveness and isolation, we find preserved without material change the main features of the Aryan village.

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<sup>1</sup> Gilbert, Handbuch d. griech. Staatsalterthümer, I. p. 115.

<sup>2</sup> Müller's Handbuch, <sup>1</sup>IV. p. 144; Andocides, *de Myst.*, 127: "The Ceryces voted according to a law which they have which allows a father to introduce his son when he has sworn that he is of a truth introducing his own son." The Ceryces were a noble gens.

<sup>3</sup> Gilbert, *op. cit.*, I. p. 185, n. 2

Each gens is said to have contained thirty families, while thirty gentes constituted a phratry. Both numbers are doubtless hypothetical, being assumed for the purposes of government, when Athens became the capital; or possibly invented outright by later theorists. The number of families must have varied greatly in the different gentes. Nor do we know how many gentes existed in Attica in this early time. For even if the given number is genuine, it does not necessarily apply to the period of autonomous villages. If there were 360 gentes in Attica, each gens occupied on an average a little more than two square miles of territory, or about 1500 acres. It seems strange that Attica could contain so many autonomous units, each occupying so small a space. Doubtless the villages were originally larger; for the necessity of self-preservation tended to maintain large units. But when phratric, and still larger groups were formed, the communal bond was relaxed and the main branches fell apart and formed new gentes. Even before the formation of higher units, there were tendencies in operation which frequently dismembered the gens in the manner just described. These were strife between the families within the gens and agricultural and grazing conveniences.<sup>1</sup> This process was assisted by the migration of leading Eupatrid families, — attendant upon the synoecism —, to Athens. It will be shown hereafter that each city of the Attic Dodecapolis — which we shall term “phratric city” — was composed of about four villages, giving forty-eight villages, or large clans, for all Attica. These were in turn divided, doubtless, into sub-villages, — also called *κῶμαι* or *demi*.<sup>2</sup> According to this view, then, the deme was a section of the original village domain, occupied by a

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<sup>1</sup> “When in a commune the pressure of population is felt, if there be vacant territory, the people form new communes ad infinitum”; Hearn, *Aryan Household*, p. 235. Cf. Krauss, *Sitte und Brauch der Südslaven*, p. 111.

<sup>2</sup> Each larger community had its sub-divisions; Hearn, *op. cit.*, p. 218. “In the course of time a gens is divided into a number of sub-gentes, and the latter gradually become independent”; Leist, *Graeco-italische Rechtsgeschichte*, pp. 150–1.

family or a group of closely related families. As the influences of centralization began to be felt, the larger communal corporations were dissolved, and the demes took the place of the villages. Hence, there is no need to suppose that every gens of historic times was once an independent village; but they represented rather the main branches or sections of the original autonomous village.

(c) *Dependent Classes in the Gens.*

Besides the slaves, who were within the household, there were two dependent classes, or ranks (*ethne*), within the gens. These were (1) the peasants, *Georgi*, *Geomori*, *Agroeci*, *Pelatae*<sup>1</sup> and (2) the artisans and tradesmen, *Demiurgi*. The first class was the older, and arose as follows. While the clans lived in villages and maintained their independence,<sup>2</sup> each felt a great anxiety to increase its military force; and as the village possessed more land than sufficed for its own use, strangers were allowed to come into the village, and receive small parcels of land near its marches, and to hold these as clients of the gens.<sup>3</sup> They were liable to taxation, paying one-sixth of the produce of the land, and to military service; and, in turn, enjoyed some private rights<sup>4</sup> and some participation in the gentile-worship. Of political rights they had none whatever. Among their private rights must have been security of life, ownership of property, and the privileges of trade and contract.<sup>5</sup> In these, however, they sought the protection of the law only through their patrons. They were not themselves supposed to know

<sup>1</sup> Aristotle, *Politeia* of the Athenians, chs. 2, 13; *Agroeci* in the Berlin fragment.

<sup>2</sup> The fact that *Shannivartani* and *Pelatae* alike paid one-sixth is sufficient proof that the institution is Aryan.

<sup>3</sup> Attachment to the gens might readily be displaced by attachment to the individual nobles of the gens against the gens itself. At times the nobles induced men to enter the gens for the sole purpose of strengthening themselves. See Hearn, *Aryan Household*, p. 254.

<sup>4</sup> Gilbert, *Altattische Komenverfassung*, pp. 208-9.

<sup>5</sup> Ihne, *Early Rome*, p. 114; Müller's *Doriāns*, II. pp. 62, 66.

the customs of the gens or the forms of judicial procedure.<sup>1</sup> As participants in the worship they were called *orgeones*. To be sure, they could not themselves perform religious rites; nor were they initiated into all the service of the gens. Probably this participation amounted to nothing more than their presence at the village festivals and a share of the sacrificial meat.<sup>2</sup>

There is no doubt that clients of this sort existed before the separation of the races; and that their relations to the patron were already defined. Leist supposes them to have been Aryan,<sup>3</sup> and this accords with what we know of them in Attic history. No difference of dialect or customs is mentioned,—nowhere are they regarded as aliens. Had the *Agroeci* and *Demiurgi* been of non-Hellenic race, they would not so easily have had their claim to citizenship allowed, and Solon could not have said that he gave to them merely what was their due.<sup>4</sup> Probably after the Ionic settlement of Attica, the clients still continued to come in. The original inhabitants were either expelled or reduced to slavery. Some of these, to be sure, may have become clients; but not so as to affect the character of the class.

The second rank of inferiors, the *Demiurgi*, came in with the recognition of the principle of the division of labor. Men found it better and more economical to purchase of a skilled workman than themselves to produce what they needed. Accordingly the invitation was given to professional workmen to settle within the village domain.<sup>5</sup> These also received certain rights, yet fewer perhaps than the *Agroeci*, since in early Greece the possession of land fixed a man's position in relation to the state.<sup>6</sup> The old settlers, in contrast with these newcomers, styled themselves *autochthones*; in contrast with their in-

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<sup>1</sup> Maine, *Ancient Law*, pp. 11-12.

<sup>2</sup> Cf. Manu, III. 246; Mommsen, *History of Rome*, I. pp. 94-6.

<sup>3</sup> Leist, *Altarisches Jus Gentium*, pp. 448-9.

<sup>4</sup> Solon's Poems, quoted by Aristotle, *Ath. Pol.*, ch. 12.

<sup>5</sup> Gilbert, *Altattische Komenverfassung*, p. 209.

<sup>6</sup> Id.

feriority, they were called *Eupatridae*.<sup>1</sup> These alone enjoyed political and religious offices.<sup>2</sup> The growth of the kingship bettered the condition of the *Agroeci* and of the *Demiurgi*, so far as the latter had come into existence. For the army was composed of Plebeians as well as Eupatrids, and all the soldiers attended the agora. Thus, in the Homeric army a distinction is made between leaders and people, seldom between nobles and Plebeians. No vote was taken, and the voice of the peasant was as loud as that of his Patrician neighbor. At this time it appears that many of the clients became free. Under the oligarchy, however, all this was changed. The agora rarely met in Athens during this period; and when it did meet, little influence was exercised by it upon the government.<sup>3</sup> Moreover, the Eupatrids no longer depended upon the Plebeians for defense, and as slavery was becoming fashionable, there was no longer any need of a free peasantry. Accordingly, the Eupatrids united with the capitalists in encroaching upon the privileges of these, and were in the time of Solon reducing them once more to serfdom.<sup>4</sup> There was a third lower rank, the *Thetes*, who did not belong to any gens. As they had no land nor professional skill, there was no object in granting to them special rights. They, therefore, supported themselves inadequately and wretchedly by working at odd jobs and in busy seasons for those who could not afford to keep a sufficient number of slaves.<sup>5</sup> While such *Agroeci* as had gained freedom were fast returning to slavery, the *Demiurgi* were rising in importance. Many had enriched themselves by commerce,

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<sup>1</sup> Gilbert, *op. cit.*, p. 208.

<sup>2</sup> Plutarch, Theseus, 25: "To the nobility he committed the care of religion, the choice of magistrates, the teaching and dispensing of the laws, interpretation and direction of all sacred matters."

<sup>3</sup> The only assembly known was that which met during the siege of Cylon in the Acropolis. On this occasion the lower ranks seem to have been represented; Thuc. I. 126.

<sup>4</sup> Aristotle, *Politeia* of the Athenians, ch. 2.

<sup>5</sup> Mahaffy, *Social Life in Greece*, pp. 65-6, with references to Homer and Hesiod.

and now formed a middle class, or rank, between nobles and peasants. These lived along the coast and belonged to the party of Paralians.

(d) *Weakening of the Gens.*

It is intended here merely to sum up the disintegrating forces. Hearn<sup>1</sup> and Fustel de Coulanges<sup>2</sup> have already treated the subject carefully.

1. The opposition of the state. This may be regarded as the chief cause of disintegration. The king, to strengthen his own position, intruded within the sacred circle of the gens, and endeavored to take from it some of its privileges. On the other hand, the gens was no longer compelled by dangers from without to keep up its organization with the same strictness.

2. Internal strife. This arose between powerful families of the gens. Sometimes the younger branches, which enjoyed fewer privileges, rebelled against the older.

3. Opposition of the inferior classes. These were compelled to share in the burdens of government. They demanded therefore a share in its privileges. Their greatest obstacle in the way of attaining this end was the gens; and against it they directed their most violent attacks.

4. Finally, the natural expansion of the human mind, outgrowing the narrow sphere in which it was placed. Yet the Greeks never freed themselves wholly from "clannishness." A history of Greek politics is mainly a history of clan prejudices in its effect upon the political organism. Individuals lived who were free from these prejudices; yet such were exceptional and came late in history.

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<sup>1</sup> Aryan Household, ch. XX.

<sup>2</sup> Ancient City, pp. 336-341.

## CHAPTER IV.

### THE PHRATRY AND PHYLE.

It has already been stated that the *phyle* is older than the Aryan household as we find it at the dawn of history. On the other hand, we are able to trace the growth of the phratry from the gens and the family. Inside the *phyle*, the family developed by a natural process into the gens, bequeathing to the latter its own organization and institutions. After the gens had once been formed, new families were sometimes admitted into the village by adoption,<sup>1</sup> thus giving to such gentes their partially fictitious nature. Village life in this form was the most characteristic feature of the Aryan period. Yet even before the separation of the races, it was common for the villages of a neighborhood to combine, for the purposes of defense and aggression, into the larger phratric unit.<sup>2</sup> The central point of the phratry was an easily defended hill (*ἄκρος*), which was protected by a ring of earth-works (*πόλις*).<sup>3</sup> The gentes composing a union chose one of its ablest *pateres* as *basileus* (phratriarch, or *gau*-king).<sup>4</sup> The process of combining was aided in some cases by the discovery that neighboring gentes practiced similar religious rites, thus indicating a blood-relationship.<sup>5</sup> Other clans of the neighborhood which could not put forth this claim to kinship, might be received by adoption into the phratry. The religious character of the phratric union was that of its component members, consisting of those rites and beliefs which the gentes were found to hold in common, while alien gentes must adopt this worship at the time of their admission.<sup>6</sup>

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<sup>1</sup> Od. IV. 174 ff.

<sup>2</sup> Schrader, Sprachvergleichung und Urgeschichte, p. 582.

<sup>3</sup> Id. p. 583; Manu, VII. 70; Institutes of Vishnu, III. 6.

<sup>4</sup> Schrader, *op. cit.*, p. 583.

<sup>5</sup> Hearn, Aryan Household, p. 259.

<sup>6</sup> Id. pp. 269-270.

Where neighboring gentes were actually connected in blood, a voluntary union under the fear of a common danger, or desire of some advantage attainable only by common effort, was perfectly natural. Many instances of such combinations are known. Yet when the villages belonged to different tribes or races, a voluntary union could hardly be expected. In this case, centralization was brought about through conquest of the weaker villages by some powerful neighboring town.<sup>1</sup> This mode of combination was not wanting even in cases of kinship. The conquered villages were sometimes removed, in whole or part, to enlarge the city of the conquerors. In the meantime, the *phyle* continued as a non-political unit, occupying for the most part a continuous territory, and distinguished from other *phylae* by its dialect and local customs.<sup>2</sup> Only on the occasion of some great undertaking, was the tribe-king chosen; and the villages and phratries of the *phyle* for the time acted in unison.<sup>3</sup> Thus, the migrations of the races took place by tribes. It is natural that when the tribe-king, chosen for such an enterprise, proved to be a man of great ability, his rule became hereditary; and the tribe after settlement in its new home retained its coherence, and in some cases, exhibited a strong, centralized power.<sup>4</sup> Thus, the petty kingdoms of England arose from the invading tribes of Angles and Saxons. Thus, the tribes of Epirus and Aetolia were coherent, political units when we first meet them in history.<sup>5</sup> In Attica, so far as we are informed by tradition, the tribes did not play an important part in early history, the synoecism taking place by villages and cities rather than by tribes.<sup>6</sup> If, however, it is possible to identify the main local districts of Attica with its tribal divisions, it will appear

<sup>1</sup> Thucydides, I. 8.

<sup>2</sup> Herodotus, VIII. 144, for a description of the tribe of Hellenes. Cf. Thucydides, I. 3.

<sup>3</sup> Hearn, Aryan Household, pp. 274-5.

<sup>4</sup> Schrader, Sprachvergleichung und Urgeschichte, pp. 583-4; Leist, Graeco-italische Rechtsgeschichte, pp. 105-6.

<sup>5</sup> Kuhn, Rhein. Mus., XV. p. 9 ff.

<sup>6</sup> Plutarch, Theseus, 24, 32; Thuc. II. 15.



that not even the Attic *phylae* were so insignificant as has generally been supposed.

The religious and political constitution of the tribe was patterned after that of the family.<sup>1</sup> In Aryan times, although there may have been confederations of tribes for temporary objects, no coalescence took place; and hence no city, in the proper sense of the term, was organized. King, in the Aryan sense, is phratric king or, at most, tribe-king; and city is merely the fortified centre of the *gau*, or phratry. It must not be assumed, however, that every village had part in a phratric union; or that villages thus taking part lost their autonomy. The limited object of the union and the resolute spirit of independence among the gentes preclude the latter idea, while even in early Attica, it is supposed that some *κῶμαι* existed outside of phratric unions.<sup>2</sup>

In early Greece, people lived everywhere in villages.<sup>3</sup> This continued down into historic times among the Acarnanians, Ozolian Locrians, Aetolians and others, while we have the authority of Thucydides<sup>4</sup> for the fact that all the Hellenes in the earliest times lived in the same way. It may be set down, then, as a well established fact that the gens, or village, was in Greece itself a virtually autonomous community, and that out of the gentes was developed the phratric city for the purpose of defense and aggression. In Acarnania, we see an actual breaking up of villages and a gathering into phratric cities. This was brought about through the persuasion of Cassander, as a military measure — to strengthen the Acarnanians against the Aetolians, their hereditary foes. "They gathered," says Diodorus, "mostly into Stratus, but some into Sauria and others into Agrinium."<sup>5</sup> In Arcadia the same process went

<sup>1</sup> Hearn, *Aryan Household*, p. 321.

<sup>2</sup> Gilbert, *Altattische Komenverfassung*, pp. 213-4. By "phratric union" I mean the union of villages or demes for permanent objects.

<sup>3</sup> Vischer, *Ueber die Bildung von Staaten und Bünden*, *Kleine Schriften*, I. p. 308 ff.

<sup>4</sup> Thucydides, I. 5.

<sup>5</sup> XIX. 67. See *Rhein. Mus.*, XV. p. 4.

on. Mantinea, for example, was formed of five κῶμαι. But the Lacedaemonians, in 385 B.C. broke up the city and distributed the inhabitants among the original villages,<sup>1</sup> for the purpose of weakening its power. After the battle of Leuctra, Epaminondas brought about a re-synoecism to strengthen the district against the Spartans. Tegea was formed of four tribes and nine demes.<sup>2</sup> The facts to which attention is called in these cases are, (1) the actual settling together of villages in phratric or tribal cities, and (2) the purpose of such a synoecism, viz., defense and aggression. When we come to Attica, we find the same principles at work. The twelve phratric cities of Attica, mentioned by Philochorus, were formed by the actual synoecism of villages.<sup>3</sup> Here, too, the object was protection, — against the Carian pirates and Boeotian neighbors.<sup>4</sup> The names of these twelve cities, assumed by Philochorus to have existed before Theseus, are, Cecropia, Tetrapolis, Epacria, Deceleia, Eleusis, Aphidna, Thoricus, Brauron, Cytherus, Sphettus, Cephisia and Phalerus.<sup>5</sup> Instances occurred in which the κῶμαι did not actually settle together, but remained in their townships (demes) in which they were originally located, selecting merely some central point as a πόλις. This πόλις served not merely as a fortified place for the united κῶμαι, but also for religious assemblies. Such groups of κῶμαι may have been the *συστήματα δήμων*.<sup>6</sup> The Philochorean πόλις of Attica were not themselves phratries but, most probably, the capitals of districts which the state afterwards organized as phratries. We know the composition of some of these Attic πόλις. (1) Ce-

<sup>1</sup> Gilbert, Handbuch d. griech. Staatsalterthümer, II. p. 125 ff.

<sup>2</sup> Id. p. 127.

<sup>3</sup> Strabo, IX. 397; Etymol. Mag. (Suidas), *sub v.* No one supposes that in the period preceding the synoecism there were exactly *twelve* cities. The actual number we have no means of determining, but may reasonably assume that the number twelve arose from a comparison of these early cities with the later twelve Attic phratries.

<sup>4</sup> Kuhn, Rhein. Mus., XV. p. 1 ff.

<sup>5</sup> Strabo, IX. 397; Rhein. Mus., XV. p. 1 f.

<sup>6</sup> Müller's Handbuch, IV. p. 23 f.

croppia was, no doubt, a single *kome* on the Acropolis. But Athens appears to have been made up of four *κῶμαι*, viz. Cecropia, Helicon, Museum, and Melite.<sup>1</sup> Here is an example of synoecism brought about by conquest. (2) The Tetrapolis was composed of Marathon, Oenoe, Probalinthus and Tricorynthus. This union was indebted for its origin to the character of the locality,<sup>2</sup> and retained in its name and constitution the nature of its composition. (3) Phalerus was also a *tetrakomia*. It was made up of Peiraeus, Phalerum, Zypete and Thymoetadae. In the neighborhood was a temple to Heracles *Tetrakomos*; and the whole was comprehended under the name Phalerus.<sup>3</sup> (4) Aphidna was situated between Deceleia and Marathon, and contained at least three *komae*, viz. Titacidae, Perrhidae, and Aphidna.<sup>4</sup> (5) Epacria contained Plotheia and Samachidae, both known as names of Attic demes.<sup>5</sup> Epacria is also spoken of as a *trittys*, which was perhaps identical with the phratry. There is no doubt that Aphidna contained other *komae* or demes; but these are all that tradition has given to us. (6) Brauron<sup>6</sup> contained the *kome* Philaadae, which also gave its name to an Attic deme. We know not how many others belong to this *polis*. These are all among the twelve *poleis* of whose composition anything has been learned. I will add to these, the remaining unions which are known, but whose names do not appear in the list of Philochorean cities. They are as follows. (7) Pallene was composed of the demes, Gargettus, Pitthus, Sphettus and Pallene, united in the worship of Athena Pallenis.<sup>7</sup> (8) Hecalesium was composed of several demes, among which were perhaps Hecale and Trinemeia.<sup>8</sup> The central point of this union was the shrine of Zeus *Hecalus*, which

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<sup>1</sup> Curt Wachsmuth, *Stadt Athen*, I. p. 388 ff.

<sup>2</sup> Gilbert, *Altattische Komenverfassung*, p. 211.

<sup>3</sup> Kuhn, *Rhein. Mus.*, XV. p. 2.

<sup>4</sup> Gilbert, *op. cit.*, p. 211.

<sup>5</sup> *Id.* p. 212.

<sup>6</sup> Plutarch, *Solon*, 10.

<sup>7</sup> Gilbert, *op. cit.*, pp. 212-3.

<sup>8</sup> Plutarch, *Theseus*, 14.

was on the way from Athens to Marathon.<sup>1</sup> (9) Mesogeia was a *trikomia* or *tetrakomia*.<sup>2</sup> One of its members was Bate, apparently in the neighborhood of Athens.<sup>3</sup> It had a shrine to Heracles, and was presided over by an archon (ἀρχων τῶν Μεσογείων), who performed merely sacerdotal functions. (10) Trikomia was composed of Eupuridae, Cropidae and Peleces. Its situation is unknown.<sup>4</sup>

It may be well here to sum up the results of this discussion. Attica was in primitive times occupied throughout its entire extent by autonomous villages with their surrounding domains. The number of these cannot be definitely ascertained, but must have been far less than 360. Larger groups which we may call phratric unions—were developed organically by the natural expansion of the village,—*i.e.*, when a village became inconveniently large or when any other sufficient motive to division existed, it separated into its component families, or groups of closely related families—each component family or group of families becoming an independent village, while all the members of the original village retained feelings of kinship and continued to deliberate in common concerning the welfare of the whole. Thus the original village became a phratry. But from this organic development there were many variations. Sometimes neighboring villages united in a phratry on the basis of a presumed kinship, sometimes kindred gentes were admitted into the phratry by adoption, sometimes villages were conquered and annexed; but in all known cases the villages of a phratry were on an equal footing. The number of these unions is unknown, but is not likely to have been exactly twelve. When all these phratric groups were united in the state they were reorganized into twelve phratries. In the process of reorganization, the state may sometimes have erected a phratry by the union of two or more groups of villages. In other cases it may have divided a large group.

<sup>1</sup> Gilbert, *op. cit.*, p. 213.

<sup>2</sup> CIA. II. 602-3.

<sup>3</sup> Gilbert, *op. cit.*, p. 212.

<sup>4</sup> Id. p. 211.

As the phratric unions were often fictitious and were formed for purposes of convenience, it was not difficult to arrange them in accordance with an artificial system.<sup>1</sup>

Later history shows that the state could regulate phratries more easily than gentes.<sup>2</sup> The unions which thus lost their political character, maintained themselves for purely religious purposes; just as the Ionic tribes continued after Cleisthenes as religious organizations. This seems to be demonstrated by the fact that the ruler of Mesogeia was called archon. It is difficult to understand how an office purely sacerdotal in origin could bear that name. It points rather to a time when the ruler was a military and administrative officer, and when the union existed for defense and aggression. When the political synoecism of Attica took place, the *prytanea* and *bouleuteria* were removed to Athens, as well as the *leschae* of the gentes. But a shrine was not so easily disturbed. The sanctuaries of both village and *polis* were maintained on their ancient sites, though disconnected henceforth with the political and administrative powers of the state.

We should naturally expect some diversity in the religious rites and deities of the phratric cities. Certainly they did not worship Zeus *Phratrius* and Athena *Phratria* before the synoecism. But Zeus was the patron deity of one union, Athena, of another and Heracles of another. Curt Wachsmuth has set forth the principle that "no site once consecrated by a shrine ever became cultless among the Greeks."<sup>3</sup> It is in accordance

<sup>1</sup> Philochorus had probably little trustworthy information as to the state of Attica before Theseus. To fill out the number twelve he probably selected the names of twelve of the most prominent Attic localities known to him. Among these are the names of at least six groups of demes, which continued after the synoecism for religious purposes. There is no doubt that the development of the Attic phratry was similar to that of the South-Slavonian *bratstvo*. See p. 17 f.

<sup>2</sup> The gentes could not, as the phratries, be made to fit the Cleisthenean organization of the State, and were accordingly set aside, while the phratries remained.

<sup>3</sup> Stadt Athen, I. p. 387.

with this principle that local cults are found throughout Attica, which represent the ancient political centers of the surrounding demes.

Before proceeding further with the synoecism of Attica as a whole, it is thought best to show how the synoecism of Athens itself from the neighboring villages took place. I have here followed, in the main, Curt Wachsmuth,<sup>1</sup> who bases his conclusions mainly on mythological and archæological data. The settlement on the Acropolis was one of the oldest cities in Greece, as its situation, remote from the sea, indicates. The settlers were thus among the original inhabitants of Attica, styling themselves *autochthones*, and belonging, it is said, to the Pelasgic race. They worshiped, among the great gods, the Earth and Sun.<sup>2</sup> Across the Ilissus, on mount Helicon, slightly elevated above the surrounding hills, was another, younger settlement, which Wachsmuth thinks to have been made by Ionians, or at least, that the Ionic element was the main element.<sup>3</sup> The Pelasgians appear to have formed the primitive basis of the historical Attic race.<sup>4</sup> The settlement above mentioned had its central point and citadel on Mount Helicon, but extended over the hills and both banks of the Ilissus. It was the most favorable spot in the vicinity of the Acropolis for the growth of an independent community. These people worshiped Poseidon, Apollo, Aphrodite and the two goddesses of the mysteries, Demeter and Persephone. There must have been constant strife lasting through many years, between the old and

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<sup>1</sup> Rhein. Mus. XXIII. p. 170 ff.; Stadt Athen, I. p. 387 ff.

<sup>2</sup> Welcker, Griechische Götterlehre, I. p. 636.

<sup>3</sup> Stadt Athen, I. p. 393.

<sup>4</sup> The Pelasgians had a considerable civilization : they tilled the soil and built walls, *e. g.*, that on the Athenian Acropolis; Busolt, Griech. Gesch., I. p. 31. The primitive inhabitants of Attica were Pelasgians; Hdt. VIII. 44. They were barbarous—did not speak the Hellenic tongue; Hdt. I. 57–8, 60. Hessemeyer, Studien zur alten Geschichte, I. p. 127 ff., regards them as related to the Etruscans, as neither Aryan nor Semitic. Cf. Crusius, Beiträge zur griech. Mythologie und Religionsgeschichte, p. 8 ff.; also, review of Hessemeyer by C. Pauli in Neue Philologische Rundschau, 1892, pp. 250–3.

the new cities. This is typified in Attic Mythology by the strife between Athena and Poseidon for the possession of the city.<sup>1</sup> Finally under Theseus the new community was victorious. A treaty was made between the two peoples, whereby the new community was admitted to the Acropolis, and its king seated upon the throne. Their religions were also blended, and Poseidon took up his abode in the temple of Athena. There was also an independent settlement on the Museum south-west of the Acropolis.<sup>2</sup> Wachsmuth believes that this was inhabited by the Thracians, as indicated by the cults of Dionysus and the Muses attached to the locality.<sup>3</sup> The settlement was of far less importance than that of Helicon, and hence has not left as distinct traditions of its conquest. The fourth community was that of Melite, west of the Acropolis, which, for various reasons not altogether satisfactory, Wachsmuth assigns to the Phoenicians.<sup>4</sup> The tradition of Theseus' war with the Amazons, he tells us, probably goes back to the strife between Athens and Melite.<sup>5</sup> It is further the belief of Wachsmuth that the *Diasia* was celebrated in remembrance of a confederation which was likely to have existed before the coalescence. The *Synoecia*, or *Metoechia*, was instituted to commemorate the final synoecism.<sup>6</sup> These two terms were originally synonymous, and indicated an actual migration and settlement together. In later times, synoecism meant no more than a political union.

But even this synoecism did not bring perfect peace. Menestheus, great-grandson of Erechtheus, headed the autochthonous element of the population against the foreign conqueror, Theseus, drove him into exile and himself mounted the throne.

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<sup>1</sup> Hermann, Griechische Staatsalterthümer, p. 267.

<sup>2</sup> Ginn & Heath's Classical Atlas, map 13.

<sup>3</sup> Stadt Athen, I. p. 399. While it is likely that this settlement existed, the proof that it was made by Thracians is insufficient. Cf. Wilamowitz-Moellendorf, Philol. Untersuch., I. pp. 97-172.

<sup>4</sup> Stadt Athen, I. p. 404 ff.

<sup>5</sup> Id. p. 447.

<sup>6</sup> For Thumser's objections to this view, see his Griech. Staatsalterthümer, p. 306, n. 3.

It was Menestheus who led the Athenians to Troy. We must not infer from the *Iliad*,<sup>1</sup> that Athens had at this time extended its sway over Salamis. The passage is, doubtless, a late interpolation, and its only value is to give a hint as to the condition of things when Salamis was independent of Athens ; for the Salaminians followed their own leader. The Theseides regained the throne after the death of Menestheus, and ruled despotically, as the people of later times supposed, embodying their belief in the fictitious names of the last three kings of this line, — Oxyntes, "the severe," Apheidias, "the unsparing," and Thy-moetes, "the passionate."<sup>2</sup>

The reasons for believing that the synoecism of Theseus affected Athens alone and not the Dodecapolis, may be stated as follows:

1. It was the custom of later times to refer any and all of the institutions of the developed Athenian state to Theseus as their originator.<sup>3</sup> Thus, he was not merely the king who united Attica into one state, but the founder of the Athenian democracy, voluntarily abdicating the kingship. To him was attributed the first coinage and the institution of ostracism. Sometimes the laws of Athens were referred to him as their maker. All this speculation belongs to a later age. In it we find only an attempt to restore a state of things before the dawn of authentic history. Even the hero, Theseus, is in great part a late invention, and was introduced into Greek mythology after the rise of Athens, as an offset to the Lacedaemonian hero, Heracles. There is, indeed, no more reason for ascribing to him the synoecism of Attica than any of the institutions mentioned. Any tradition connected with Theseus is to be regarded with suspicion, and is to be rejected outright when it seems probable on other grounds that the institution or event

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<sup>1</sup> II. 557-8.

<sup>2</sup> Gilbert, *Handbuch d. griech. Staatsalter.*, I. p. 116 ; Wachsmuth, *Stadt Athen*, I. p. 472. Cf. Busolt, *Griechische Geschichte*, I. p. 399 ; Hdt. V. 65 ; Strabo, VIII. 359 ; IX. 393 ; XIV. 633 ; Paus. II. 18, 9.

<sup>3</sup> Grote, ch. XI (small edition), I. p. 158 f., (large edition), I. p. 189 ff.



under consideration belongs to a later period. This is pre-eminently the case with the synoecism.

2. The word synoecism means literally "a settling together." At so early a date, it could have had no other meaning,—it could not express the mere political union of the twelve cities. Thucydides is right in ascribing a synoecism and its festival to Theseus, but not right in identifying it with the union of the Dodecapolis.<sup>1</sup>

3. This union is said to have taken place before the Trojan war. If so, it must have made Athens one of the most powerful cities of Greece. The fact is that she was one of the weakest, and that too, far down in historic times. It is well known that Athens played an insignificant part in early Grecian history, and that in the times of Peisistratus and later, when she began to rise among the Greek states, her heroes had to be smuggled into Greek mythology. Thus, the portion of the catalogue of ships relating to Athens is unquestionably an interpolation.<sup>2</sup> This will be considered further when we come to discuss the naucrary. It may be stated here that even in the time of Solon, Athens betrayed a weakness which reminds one of the days before the synoecism, when each city stood alone. It was Peisistratus who brought about the perfect coalescence of Attica and who gave to Athens a place of dignity and power in Greece. In one respect we may call Theseus the author of the political unity of Attica. As Solon gave to the Athenians a constitution that was capable of expansion and development, and a few salutary laws, which served as an excellent nucleus to an Attic corpus, so Theseus laid the foundation of a political unity by assuring to Athens her military and political supremacy. And as the later Athenians were inclined to ascribe the whole body of their laws to Solon, they likewise honored Theseus for the final results of his achiev-

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<sup>1</sup> Thucydides, II. 15.

<sup>2</sup> Kiessling und Wilamowitz-Moellendorff, *Philologische Untersuchungen*, VII. p. 244 ff.

ments, erring only in ascribing to him as immediate author the results themselves.<sup>1</sup>

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<sup>1</sup> Authorities for the phratry: Schrader, *Sprachvergleichung und Urgeschichte*, pp. 2574-5; Müller's *Handbuch*, IV. pp. 22 f., 106-8, 144-6; Gilbert, *Handbuch d. griech. Staatsalter.*, I. pp. 103 ff., 113, 184-6; Fustel de Coulanges, *Ancient City*, pp. 154-8; G. F. Schömann, *Assemblies of the Athenians*, p. 340 f.; *Athenian Constitutional History*, pp. 15-7; *De Phratriis Atticis*; Philippi, *Beiträge zu einer Geschichte des attischen Bürgerrechts*, pp. 248 ff., xvi with references; Gilbert, *Die altattische Komenverfassung*, p. 210 ff.; Hammarstrand, *Attikas Verfassung zur Zeit des Königtums*, p. 816 ff.; Hearn, *Aryan Household*, ch. XI ("Combination of Clans"); Landwehr, *Zur ältern attischen Geschichte*, *Philol. Suppl.* V. p. 166 ff.; Szanto, *Zur attischen Phratrien- und Geschlechterverfassung*, *Rhein. Mus.* XL. pp. 506-520; Busolt, *Griechische Geschichte*, I. pp. 370 ff., 395 ff.; Thumser, *Die griech. Staatsalterthümer in Hermann's Lehrbuch der griech. Antiq.*, pp. 317-24.

## CHAPTER V.

### THE FOUR IONIC PHYLAE.

The members of each tribe were bound together by the double tie of a common religion and kinship,—the latter being partly factitious,—thus giving to the tribes their family, or gentile nature, on account of which they were designated as *φυλαὶ γενικαί*. In addition to this, the latest and most thorough investigations relating to this subject have tended to establish the fact that the four Ionic *phylae* comprised originally the inhabitants of continuous territories, and were therefore local tribes (*φυλαὶ τοπικαί*).<sup>1</sup>

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<sup>1</sup> 1. There can be no doubt as to the nature of the gens. It lived in a village and occupied a definite, coherent territory. Aristotle, *Politics*, I. 2; Hearn, *Aryan Household*, p. 212.

2. The ancients regarded the phratry as local. This appears from the fact that they derived *φρατρία* from *φρέαρ*, and made it comprise, accordingly, those who had a common well; cf. Schömann, *Athenian Constitutional History*, p. 11. Again, the phratry was a collection of gentes and was, therefore, originally local. It occupied also a continuous territory. This is shown by the way in which it was developed from the gentes. None but neighboring gentes would unite for defense and aggression. Accordingly, the obligation of the blood-feud was made to extend to *Phrateres*; Dem. XLIII. 57. The practical fulfilment of this obligation required that the phratry should occupy a continuous territory.

3. In the belief of the ancients, the tribes were local as well as gentile, and were identified by them, to some extent, with the natural divisions of Attica. Some of the ancients endeavored to reconstruct the state organization as they imagined it to have existed before the institution of the Ionic *phylae*. They still assume the existence of four tribes, but give them different names. Two sets of them have thus come down to us: one for the tribes under Cecrops, the other for the tribes under Cranaüs. To these may be added the division of Attica among the sons of Pandion, quoted by Strabo (IX. 392) from Sophocles, in which Acte takes the place apparently of two former tribes. Its situation is explained by schol. on Aristoph. *Wasps*, 1223 and *Lysist.* 58. There existed also in the time of Solon a fourth division of Attica into three local districts. The four divisions are compared by Philippi (*Beiträge zu einer Geschichte des att. Bürgerrechts*, p. 243) in the following table.

The theory has been held that the four tribes were castes or professions, and that the names of the tribes corresponded to their occupations, or ranks. Thus the word *Hopletes* signifies "Warriors," *Aegicoreis*, "Goat-herds," *Argadeis*, "Laborers"; but whether husbandmen or artizans is uncertain. As to the meaning of *Geleontes*, which is the first on the list, there is an endless variety of opinion.<sup>1</sup> The derivation of the word from γελῶν, "to shine," is now generally accepted<sup>2</sup> as most probable. The term thus signifies "The Illustrious,"<sup>3</sup> and designates a priestly or martial class. While there can be but little doubt as to the meaning of at least three of these words, the theory that they represent castes demands an essential modification. Grote<sup>4</sup> seems to be right in assuming that the names were applied from their chief occupations, the *Aegicoreis* being mainly, but not exclusively, goat-herds, and so of the rest. Schömann<sup>5</sup> supports his view and illustrates it by the fact

Under Cecrops	Actaea	Cecropis	Autochthon	Paralia
" Cranaus	Atthis	Mesogaea	Diacris	Cranais
" Pandion according to Sophocles	<div style="display: flex; align-items: center; justify-content: center;"> <div style="font-size: 3em; margin-right: 5px;">}</div> <div>           Acte  <i>ἡ περὶ τὸ δῶρυ</i> </div> </div>		Diacria	Paralia
" Pandion according to the scholium on Aristophanes				
" Solon	Pedion		Diacria	Paralia

The local nature of the four tribes becomes still more apparent when we consider their relation to the *trittyes* and *naucrariae*. These were distinctly local districts. Each tribe was divided into three *trittyes*, and each *trittys* into four *naucrariae*; Arist., Ath. Pol., ch. 8. If the tribes were not local, they could have had no local subdivisions.

<sup>1</sup> For the various opinions, see Hammarstrand, *Attikas Verfassung zur Zeit des Königtums*, p. 791 ff.

<sup>2</sup> Id. pp. 792-3; Müller's *Handbuch*, <sup>2</sup>IV. p. 125; cf., however, Thumser, *Griech. Staatsalterthümer*, p. 295.

<sup>3</sup> Or perhaps the "worshippers of the glorious Zeus."

<sup>4</sup> Pt. II. ch. X (small edition) I. p. 558, (large edition) II. p. 425.

<sup>5</sup> *Athenian Constitutional History*, p. 7 ff.

that there was a deme, *Kerameis*, the "Potters," named after the chief industry of that locality. Accepting the view of Grote and Schömann as satisfactory, let us inquire as to the more precise denotation of the terms. It seems to me that with any reasonable etymology, *Geleontes* must denote husbandmen. Hammarstrand affirms that Zeus *Geleon*, the Eponym of this tribe, was the Pelasgic Zeus and that the tribe was therefore Pelasgic. This would give rise to the reputation of the people as a priestly class, and would demonstrate their occupation to be husbandry; for such was the chief occupation of the Pelasgians, so far as we are acquainted with them. Even without bringing in the notion of their Pelasgism, however, we obtain the same result; for those who prided themselves on the observance of religious rites were preëminently the landed nobility. Again, supposing them to be a martial class, they must still have been husbandmen; for these were the only class in early Greece who composed the heavy-armed. This last argument applies equally well to the *Hopletes*. My conclusion is, then, that these two tribes were chiefly agricultural, and that the difference between the two was one of race or religion,—not of occupation.<sup>1</sup> This is the only conclusion possible after laying aside the caste theory. The *Argadeis*, it is admitted, were laborers. If two tribes of husbandmen existed besides, it seems more likely that these were artizans and perhaps tradesmen. Yet the *Argadeis* were certainly Eupatrids, being eligible to the office of *Phyllobasileus*, to which only the nobility had access. Their occupation will be further considered in connection with the question as to their locality.

It remains to consider the situation of these *phylae*. Since the *Geleontes* and *Hopletes* were not only husbandmen, but also, apparently, the most powerful of the tribes, they must have had their choice of territory. Accordingly, they took up

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<sup>1</sup> This conclusion accords with Thumser's view, *loc. cit.*, who makes *Γελεόντες* signify "cultivators."

their abode in the plain. The *Hopletes* are sometimes assigned to Diacria, the mountain land in the north of Attica, following the tradition of an Ionic migration from Thessaly to that region. But this tradition arises merely from the ambition of the early Athenians to connect themselves with the general scheme of Hellenic migrations and settlements.<sup>1</sup> It has, therefore, no value for our investigation. This is especially true, since we find another tradition equally good, pointing to Acte as the abode of the *Hopletes*, and to the hypothesis of a migration of this tribe into Attica from the Peloponnesus by sea.<sup>2</sup> It seems impossible that the *Hopletes*, a warlike race, should content themselves with the barren mountains and the wretched livelihood of goat-herds, when the Attic plain lay open to them. Much rather, must we suppose that they settled in the plain in accordance with the tradition last mentioned. Now, the plain may be divided into two parts, the Acte, or coast, and the Mesogaea, or interior. Tradition, as has been said, connects the *Hopletes* with Acte. We have seen how Cecropia was conquered by the men of Helicon under Theseus. It may be assumed with some reason that these were *Hopletes*, who had crossed the sea from Argolis. After establishing their power at Athens, their next step was to extend their conquests and alliances. It is certainly impossible to say in detail how the synoecism of Attica took place. Probably Phalerus was next taken, and an alliance made on equal terms with the *Geleontes*, who inhabited the Mesogaea, dwelling in the cities, Aphidna, Deceia and Cephisia.<sup>3</sup> The alliance was promoted by the fact that no natural boundary separated the two peoples. The *Geleontes* took precedence, whether from superior power or

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<sup>1</sup> Hammarstrand, *Attikas Verfassung zur Zeit des Königtums*, pp. 794-806. Thumser, *Die griech. Staatsalterthümer*, p. 295, believes that they settled in the Tetrapolis.

<sup>2</sup> Hammarstrand, *op. cit.*, pp. 795-6. It must be borne in mind that absolute certainty as to the location of the tribes is at present unattainable. We must content ourselves with the probable.

<sup>3</sup> Hammarstrand, *op. cit.*, p. 815.

whether from the great reverence in which their deity, Zeus *Gelson*, was held. The confederation soon resulted in a perfect coalescence; and the district occupied, in contrast with the rest of Attica was called simply "The Plain," and its inhabitants, *Pediaeans*. The *Aegicoreis* lived in *Diacria*, in the cities, *Tetrapolis*, *Epacria* and *Cytherus*.<sup>1</sup> They were for the most part a pastoral race; yet there were men of different occupations among them, as among the other tribes. The *Argadeis* dwelt along the coast in *Paralia*. The cities of this district, according to Schömann, were *Thoricus*, *Brauron* and *Sphettus*. The people were probably traders and artisans. The ancients appear to have entertained this view, and their situation tends to confirm it. In the earliest times, while it was yet no disgrace to labor, we may suppose that the tribesmen of pure descent engaged personally in trade, manufacturing, such as then existed, and even in fishing. Afterwards, these occupations were carried on among the *Argadeis* by the *Demiurgi*, who were mainly clients.

The *Pediaeans* must have waged a keen and almost uninterrupted warfare with the other tribes. A tradition<sup>2</sup> of this strife lingers perhaps in the story of Theseus' Battle with the sons of *Pallas*. Indeed, the two tribes were never strictly subjugated; else they would not be found on terms of equality with the two already united. They were admitted to an alliance, their tribal and city autonomy finally disappearing in the process of coalescence. It was not until the time of *Peisistratus* that perfect coalescence was brought about, the three local factions of *Solon's* time still keeping up the internal strife.

*Eleusis* was the only great rival of *Athens*. Wars between the two cities undoubtedly began early; and we know that the struggle was long and bitter. At one time, the *Ionian* warriors almost lost their cause, and there was great danger that *Eleusis* would conquer *Athens*. Finally, after all the rest of continental *Attica* had been united, the *Hoplites* triumphed, and *Eleusis*

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<sup>1</sup> Hammarstrand, *op. cit.*, p. 815.

<sup>2</sup> *Id.* p. 810.

was deprived of its autonomy. This happened shortly before Solon. Then came the contest for Salamis, in which that great statesman bore an important part, and which was finally terminated in favor of Athens by the able generalship of Peisistratus.

As soon as Athens became the capital of the Confederacy, a migration of the nobility set in from all directions towards Athens. This brought great confusion into the tribal organization of the state. The gentes were naturally affected first by this disorganization; then, the phratries, and finally, the tribes.<sup>1</sup>

Gradually the boundary lines of tribe and phratry became indistinct, and would have been completely obliterated, had they not been preserved by the institution of the *trittyes* and *naucrariae*.

During the monarchy, there were no direct taxes in money, but the king was supported by presents from his subjects.<sup>2</sup> These were generally victims for sacrifice, received and disposed of by the *Colacretae* for the king's use. While the tribes, phratries, and gentes remained local in character, no other territorial divisions were necessary for the levy of these contributions. But when they began to grow indistinct, the *trittyes* and *naucrariae* were instituted to preserve the local divisions of Attica. As the tribal boundaries remained longer than the others, it was thought unnecessary to make a local division corresponding to the tribe. Accordingly a *trittys* was made to cover the district occupied by a phratry, and a naucrary was

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<sup>1</sup> Authorities on the *Phyle*: Grote, ch. X (small edition), I. p. 558 ff.; Fustel de Coulanges, *Ancient City*, p. 158; Schrader, *Sprachvergleichung und Urgeschichte*,<sup>2</sup> pp. 575, 582-3; Gilbert, *Handbuch d. griech. Staatsalter.*, I. pp. 109-10; *Die altattische Komenverfassung*; Hammarstrand, *Attikas Verfassung zur Zeit des Königtums*; Schömann, *Animadversiones de Ionibus*; *The Assemblies of the Athenians*, p. 323 ff.; *Athenian Constitutional History*, pp. 3-17; Müller's *Handbuch*,<sup>2</sup> IV. pp. 124-8; Philippi, *Beiträge zu einer Geschichte des attischen Bürgerrechts*, pp. 233-296; Leist, *Graeco-italische Rechtsgeschichte*, pp. 105-6; Wilamowitz-Moellendorff, *Phil. Untersuch.*, I. pp. 97-172; E. Kuhn, *Die Entstehung der Städte der Alten*; Vischer, *Über die Bildung von Staaten und Bündnen*, *Kleine Schriften*, I. p. 308 ff.; Busolt, *Griechische Geschichte*, I. p. 391 ff.; Thumser, *Die griechischen Staatsalterthümer*, p. 290 ff.

<sup>2</sup> Fanta, *Der Staat in der Ilias und der Odyssee*, p. 53. See also p. 20, n. 5.



probably identical with the smaller territory occupied by a town. At the head of each naucrary stood the naucrar,<sup>1</sup> who probably held the office for a year, and was a chief contributor of his district to the expenses of the state. The naucrars collected the contributions from their respective districts, levied according to an existing property scale,<sup>2</sup> into the naucratic-fund. It appears that the *Colacretae* had charge of this fund,<sup>3</sup> but the receipts and expenditures were controlled by the naucrars.<sup>4</sup> The functions of the naucrar must have been originally very simple; but as the state grew in complexity, the naucrar's sphere of action widened. When it was necessary for the state to raise a small fleet, probably the maritime naucraries offered their private vessels temporarily to the public service. In this case the naucrar acted as trierarch<sup>5</sup> of the vessel furnished by his district and manned probably by its inhabitants. The fleet thus furnished was under the command of the Polemarch.<sup>6</sup> At first, the naucrar was undoubtedly a Eupatrid, for these alone held office; but I suspect that even before Draco wealthy Plebeians were admitted to the office, since the commercial interests of the state were mostly in their hands. They owned the greater number of the vessels. They were the class, then who were required to perform the most onerous duties. But duties generate rights. Hence, it was in the naucrary that the battle was fought between Eupatrids and Plebeians. Not merely on the coast, but everywhere, did the burden fall on all ranks alike, according to their means. It would not be reasonable to suppose that the Plebeians were exempt from contributions to the support of the government; and it was only through the naucrary that such contributions were made. Before the monarchy began to decline, the board of naucrars, if then in

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<sup>1</sup> Pollux, VIII. 108, shows that there was but one naucrar to each naucrary.

<sup>2</sup> Gilbert, Hdb. d. griech. Staatsalter., I. pp. 135-6.

<sup>3</sup> Schol. on Aristoph. Birds, 1541.

<sup>4</sup> Aristotle, Ath. Pol., ch. 8.

<sup>5</sup> Bekker, Anec., p. 283, 20.

<sup>6</sup> Bekker, *loc. cit.*

existence, must have been subordinate to the king. When the kingship was succeeded by the archonship, the Polemarch took the place of the king and commanded the naucrars in their capacity as military leaders,<sup>1</sup> while in all other matters they were probably subordinate to the Archon and the Areopagus.

Besides the duties above mentioned, the naucrar must have acquired some judicial functions in his own district, especially in cases lying within the sphere of his official activity. As Cleisthenes made the demes to take the place of the naucraries, and the demarchs of the naucrars, their functions must have been similar. It is also stated that each naucrary furnished two horsemen for the army,<sup>2</sup> and this statement is now accepted by most authorities.<sup>3</sup> Homer represents the army as organized according to *phylae* and *phratritiae*. The Athenians, accordingly, were arranged in four divisions corresponding to tribes, each under its leader.<sup>4</sup> The cavalry was doubtless arranged in the same way, just as it was after Cleisthenes. It now appears that the *naucrariae* took the place of the *phylae* and *phratritiae* as the basis of the military organization. Contingents from these were probably led by the Prytanes under the command of the Polemarch.<sup>5</sup>

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<sup>1</sup> Busolt, Griech. Geschichte, I. p. 502, n. 1.

<sup>2</sup> Pollux, VIII. 108.

<sup>3</sup> Gilbert, *op. cit.*, I. p. 135, accepts the statement, but Landwehr, Philol., Supplb. V. p. 169 ff. attempts to disprove it.

<sup>4</sup> II. XIII. 690-1.

<sup>5</sup> The Prytanes were important officers at the time of the Cylonian tumult; Hdt. V. 71. Authorities on the naucrary: Grote ch. X (small edition), I. p. 559, (large edition), II. p. 426 f.; Curtius, History of Greece, I. p. 330; Schömann, The Assemblies of the Athenians, pp. 11-12; Athenian Constitutional History, pp. 12-15; Gilbert, Handbuch d. griech. Staatsalterthümer, I. pp. 134-6, 143, n. 4; Altattische Komenverfassung, pp. 245-6; Müller's Handbuch,<sup>2</sup> IV. pp. 134-5; Philippi, Beiträge zu einer Geschichte des attischen Bürgerrechts, p. xv (for references); Landwehr, Philol., Supplb. V. pp. 169-192; Busolt, Griechische Geschichte, I. p. 501 ff.; Thumser, Die griech. Staatsalterthümer, p. 314 ff. For the various conjectures as to the derivation of *ναυκρᾶρα* see Grote, Curtius, Gilbert, *loc. cit.* That proposed by G. Meyers, Curt. Studien, VII. p. 175 ff., which connects the naucrary with naval objects, is now generally accepted. The great objection to this is that Attica had no fleet, so far as we know, before Solon and probably not

before Draco. See Landwehr, *loc. cit.* The first syllable may be from the root *nan*, meaning temple (*nāś*, Meyer, Griech. Gram., sec. 64). Professor B. I. Wheeler has suggested this to me as a possible derivation. We may assume, in accordance with this view, that the tributes, in the form of gifts, collected from each of the 48 administrative districts of Attica, were deposited for safe keeping in the principal shrine of the district, that the collectors and keepers of these funds were called, from their connection with the shrine, *ναύκρατοι*, and the districts whose finances they administered, *ναυκραταί*. In like manner, the *ταυταί*, from their position as stewards of the temple, came in time to be treasurers of the state funds. The naucraries must have originated long before 640 B.C., since at this time the Prytanes had acquired great influence in the state; Hdt. V. 71. Their beginning may reasonably be placed within the period of monarchy. Cf. further, Keil, *Die Solonische Verfassung*, pp. 93-5 and n. 1; Sandys, *Aristotle's Constitution of Athens*, p. 32, n. on *τρυτῆες* . . . *ναυκραταί*.

## CHAPTER VI.

### THE BASILEIA.

Having discussed, in the preceding chapters, the genesis and character of the several members — religious, political and local — of the state as it existed before Solon, I now desire to consider the history of the state as a whole from the earliest times to the fully developed Periclean democracy.

#### (a) *Origin of the Basileia.*

There is reason for believing that the title *Βασιλεύς* was applied even to the village chief. Thus, Cecropia seems to have been a single *κώμη* on the Acropolis; and yet its rulers were called *βασιλεῖς*. In Homer, any ruler or lord appears to bear that name. In the little island of Ithaca, for example, there were many *βασιλεῖς*,<sup>1</sup> princes, no doubt, of the small districts known as demes, or *κῶμαι*. Aristotle tells us that "in the colonies of the family (*i. e.* in villages) the kingly form of government prevailed because they (the villagers) were of the same blood."<sup>2</sup> This accords with the lately offered derivation of *βασιλεύς* which makes it signify clan-chief.<sup>3</sup> That derivation, on the contrary, which connects it with military leadership<sup>4</sup> is unsatisfactory in that it disregards the fundamental character of the *basileia*. King and warrior are, indeed, contrasted in the

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<sup>1</sup> Od. I. 394-395.

<sup>2</sup> Politics, I. 2. 6 (p. 1252 b, 21).

<sup>3</sup> From \**βασι-λο-s*, *βασι-* being cognate with Lith. *gimtis* 'natural gender' — cf. *giminių* 'relationship,' 'family,' 'stock,' 'race' —; Aves. *jaiti*, 'family'; Wackernagel K. Z., XXIV. p. 297; Bezzenger, Beiträge, III. p. 174. This brings us to the Germ. *König*, as clan-head, the evident meaning in the Homeric *βασιλῆς*. This derivation is adopted by Schrader, Sprachvergleichung und Urgeschichte, p. 584, note.

<sup>4</sup> From  $\sqrt{\beta a}$  and *λεν* = *λαο*; G. Curtius, Rhein. Mus., IV. p. 258 f.

Homeric Poems.<sup>1</sup> The essential character of the village chief was that of priest at the village shrine. From the hearth of the commonwealth he derived his authority.<sup>2</sup> His command in war was a secondary function, which, however, on certain occasions came into great prominence. Besides the priesthood and military leadership, the village chief performed executive and judicial duties, the latter including the hegemony (presidency) of the village court in the *λέσχη*.

The voluntary combination of clans was for military purposes, and the person selected for ruler must be distinguished for his military ability. The bond which held the clans together was not material interest, however, but community of worship. The commonwealth thus arising, erected its hearth, kindled thereon a sacred fire, and consecrated its chief to the priesthood of the new worship. Not till then did he become a *βασιλεύς* with a divine right to rule, receiving his *θέμωτες* from Zeus. A mere leader in war devoid of sacerdotal authority, could not be called *βασιλεύς* in either the Homeric or the later sense of the term. Little can be said of the king of the small city or town, formed by the union of clans. It is known, however, that his authority was limited by a *βουλή*, consisting, no doubt, of the powerful clan-chiefs. If it is true, as it seems to be, that there were four villages to the phratry,<sup>3</sup> we may reasonably conjecture that the leading members of the *βουλή* were the phratric king (phratriarch) and four village chiefs. When Theseus united the *Bouleuteria* of the twelve cities into the common *Bouleuterium*, the number of members of the state council thus formed would be sixty.<sup>4</sup>

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<sup>1</sup> Iliad, III. 179.

<sup>2</sup> Aristotle, Politics, 1322 b, 28.

<sup>3</sup> See p. 94 f.

<sup>4</sup> This is Lange's view, adopted by Gilbert, Hdb. I. p. 120 and n. 2. The number 51 could arise at the time when the full number of archons was reached, *i. e.* in 682 B. C. The only difficulty in accepting the view is that the number of Areopagites must have begun soon after 682 B. C. to vary, while before that date the combination  $9 + 51 = 60$  did not exist. An argument in favor of the number 60, on the other hand, is supplied by the fact that Sparta had two tribe-kings and

The tribe-kings seem to have originated in the period of migrations and settlements.<sup>1</sup> The constitution of the tribes at this early period is termed by Aristotle the original constitution of Athens. "First of all," he says, "came the original establishment by Ion and those who assisted him in forming the settlement, when the people were first divided into four tribes and the tribe-kings were created."<sup>2</sup> This harmonizes with the further statement of the same writer that "the first chiefs were benefactors of the people in arts or arms; they either gathered them into a community, or procured land for them; and thus they became kings of voluntary subjects, and their power was inherited by their descendants."<sup>3</sup> The king increased his dignity and power by attaching to himself, in the earliest times, a band of companions — *ἐταῖροι* — solemnly pledged to support him in every way and to fight for his honor.<sup>4</sup> The kingship was at first elective,<sup>5</sup> the people retaining the right to depose their chief, if he should prove incapable;<sup>6</sup> but in the course of time the office became hereditary in the manner described by Aristotle, — yet not exclusively so, for the heir could be set

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thirty senators. Athens should have, if the ratio be the same, sixty senators since it had four tribe-kings. Philochorus identifies the Areopagus with the *Ephetae*; Müller's *Frag. Hist. Gr.*, I. p. 394, frag. 58; Sandys, *Arist. Const. of Athens*, p. 12. Busolt (Müller's *Hdb.*, <sup>2</sup> IV. p. 143) has proposed a new explanation of the number 51, which appears to me to be far-fetched. If Lange's view must be rejected because of new data supplied by *Arist. Ath. Pol.*, it is more reasonable to assume that the odd number was chosen to prevent a tie, and to regard the number 50 as arbitrary.

<sup>1</sup> It was as leader of a migrating tribe that the Aryan king attained to importance; Schrader, *Sprachvergleichung und Urgeschichte*, p. 583; Gilbert, *Hdb. d. griech. Staatsalter.*, II. pp. 265-266.

<sup>2</sup> *Ath. Pol.*, ch. 41.

<sup>3</sup> *Politics*, III. 14. 12 (p. 1285 b, 6 ff.); also *Thuc.* I. 13; Schömann, *Antiquities of Greece*, p. 22.

<sup>4</sup> Gilbert, *op. cit.*, II. p. 266, nn. 2-3.

<sup>5</sup> "The appointment of a king is the resource of the better classes against the people, and he is elected by them out of their own number, because either he himself or his family excel in virtue and virtuous action"; Aristotle, *Politics*, V. 10. 3 (p. 1310 b, 9 ff.).

<sup>6</sup> Plutarch, *Pyrrhus*, ch. 2; Diodorus, XV. 13.

aside and some one else chosen.<sup>1</sup> The royal authority was kept, so far as practicable, within one family, and certain families are spoken of as more kingly (*βασιλεύτερος*) than others.<sup>2</sup> Ordinarily the king held office for life; yet even here there were exceptions, the mature son sometimes taking the place of the aged father.<sup>3</sup> The tribe-king had sacerdotal and judicial, as well as political functions. When the *phylae* coalesced into the state, the tribe-kings lost their political functions, retaining their priestly character and connection with the court sitting near the Prytaneum in judgment upon animals and lifeless objects instrumental in homicide. A confederacy was early founded of the four Attic *phylae* and a king was chosen, probably from among the lower chiefs. He had at first but little authority. It was only in time of common danger, or when the whole people were moved to the undertaking of some common enterprise that his services were in demand. Gradually, as the confederation coalesced into the state, his power increased. This growth of the royal authority was assisted by contact with the Phoenicians. From these the Greeks most probably learned the use of bronze and iron weapons and building in stone.<sup>4</sup> By these means the kings of coast-lands were enabled to fortify themselves strongly and to assert their supremacy over the adjacent tribes of the interior.

(b) *His Right to Rule.*

Although the king was sometimes elected, the people believed that he was ordained of God.<sup>5</sup> He traced his descent from one of the gods,<sup>6</sup> and the further idea entered that he represented in a peculiar way the common ancestor of the race.<sup>7</sup> His

<sup>1</sup> Telemachus was threatened with this; *Od.* I. 386-402.

<sup>2</sup> *Od.* I. 394-397.

<sup>3</sup> Examples are Achilles and Odysseus.

<sup>4</sup> Gilbert, *op. cit.*, II. pp. 267-268.

<sup>5</sup> Leist, *Graeco-italische Rechtsgeschichte*, p. 127.

<sup>6</sup> *Il.* XX. 215. Thus, kings are called *διοτρεφέες* or *διογενές*; Schömann, *Antiq. of Greece*, p. 22.

<sup>7</sup> Cox, *Greek Statesmen*, I. p. 34.

commands (*Θέμωρες*, "dooms") rested for their authority upon direct inspiration. These, it was said, came from Zeus, who gave to the king his right to rule. They were not laws containing a general principle, but judgments applying to particular cases.<sup>1</sup> From them, in time, developed the customs of the state, which in Athens were reduced to writing by the *Thesmothetae* and Draco. Even in the beginning, they could not have been purely arbitrary, but must have accorded with the tribal, phratric, and gentile customs already existing. His authority was limited first, by the customs and privileges of the gentes, with which he dared not to interfere; and again, in inter-gentile relations, by the *βουλή* of elders. It was his interference in the internal affairs of the gentes which aided in bringing about the abolition of the royal power.<sup>2</sup> Even within this restricted sphere of activity, his authority was limited by the religious usages and beliefs of the age. Everything in the commonwealth must be done according to the will of the gods, so far as that could be known.<sup>3</sup> The king was bound by this will as much as any one of his dependents.

In war the king had more authority than in peace. Only on the battle-field did he have power over life and death.<sup>4</sup> He was commander-in-chief of the state forces,<sup>5</sup> and must show himself superior in personal valor. He undertook no important military measures, however, without advising with the *Boule* and gaining the consent of the army. Thus, he is seen to have had far less power than a modern general, who never thinks of asking the consent of the army to any plan which he has in mind. In

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<sup>1</sup> Maine, *Ancient Law*, pp. 3-5.

<sup>2</sup> Fustel de Coulanges, *Ancient City*, p. 321.

<sup>3</sup> Leist, *Graeco-italische Rechtsgeschichte*, p. 127.

<sup>4</sup> "The king has not the power of life and death, except when upon a campaign and in the field; after the manner of the ancients which is described by Homer. For Agamemnon is patient when he is attacked in the assembly, but when the army goes out to battle he has the power even of life and death"; Aristotle, *Politics*, III. 14. 4 (p. 1285 a, 7 ff.). Cf. *Iliad*, II. 391 ff.; XV. 348 ff.

<sup>5</sup> Buchholz, *Die homerischen Realien*, II. 1. p. 13.



peace he performed such executive and judicial<sup>1</sup> functions as at this time belonged to the state, assisted by the *Boule*. It is wrong to suppose that the king was absolute in either of these departments. In the Homeric Age, king and senate held the *κράτος*, or sovereignty.<sup>2</sup> This they had originally received from the people, though, in the popular belief, it came from heaven. The people, accordingly, asserted their generally latent power only on special occasions.<sup>3</sup> Thus in all important matters, the king must win the consent of the *Agora*. He protected, also, the helpless and oppressed<sup>4</sup> and, as *pater* of the larger state family and priest at the hearth of the commonwealth, superintended the state religion.<sup>5</sup> While, in point of fact, the king was often unjust and oppressive in his dealings,<sup>6</sup> the ideal sovereign cared like a father for his people,<sup>7</sup> paying regard to the common interests rather than his own,<sup>8</sup> maintaining justice, scattering plenty and happiness over the length and breadth of his country.<sup>9</sup> The king was supported in part by the produce of land, some of which was assigned by the state, and which was inherited by the succeeding king; another portion of the

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<sup>1</sup> Il. II. 204. He was not considered as legislator, but merely as guardian of the *themistes* from Zeus. It is in this capacity that he carries the scepter; Gladstone, *Homer and the Homeric Age*, III. p. 56; Il. I. 234; IX. 99; Buchholz, *Die hom. Real.*, II. 1. p. 13. As guardian of the laws he is called *δικασπῶλοι*, Buchholz, *op. cit.*, p. 12. The *Gerontes*, also, hold the scepter and are called *δικασπῶλοι* (Il. XVIII. 505) showing that they as well as the king exercised this guardianship.

<sup>2</sup> Leist, *Graeco-italische Rechtsgeschichte*, pp. 130, 136-7.

<sup>3</sup> *Iliad*, VII. 406 ff.; IX. 17 ff.; Fanta, *Der Staat in der Ilias und Odyssee*, p. 89 ff.

<sup>4</sup> Od. VIII. 32-3; XX. 222 f.

<sup>5</sup> Hearn, *Aryan Household*, pp. 322-3; Fanta, *op. cit.*, pp. 56-7.

<sup>6</sup> Fanta, *op. cit.*, pp. 58-9.

<sup>7</sup> Od. II. 47; cf. Il. II. 24-5.

<sup>8</sup> "Of forms of government in which one rules, we call that which regards the common interests, kingship"; Aristotle, *Politics*, III. 7. 3 (p. 1279 a, 33). The perversion of this is tyranny; cf. III. 13. 25 (p. 1284 b).

<sup>9</sup> "A blameless king, one that fears the gods and reigns among many men and mighty, maintaining right, and the black earth bears wheat and barley, and the trees are laden with fruit, and the sheep bring forth and fail not, and the sea gives store of fish, and all out of his good guidance, and the people prosper under him"; Od. XIX. 109 ff.

land belonged to him as an individual, and descended regularly to his children.<sup>1</sup> Moreover, he received presents from his subjects for judicial or other services,<sup>2</sup> and a great share of the plunder in war.<sup>3</sup> The government was largely personal,<sup>4</sup> and was marked by an absence of form. So, also, he retained his authority only by the display of personal excellencies, such as superior bodily strength, skill, and activity, personal bravery, wisdom, and eloquence, all these being marks of divine favor.<sup>5</sup> The necessity of this last quality shows the democratic spirit of the times. The Agora will not give its consent unless it has been persuaded thereto. Homer admits into his poems none but the ideal king, *i. e.*, the one who is always successful in influencing the people. This principle is to be taken into account in estimating the value, as evidence, of Homer's poems. We must also consider that he was a court poet, and represented the king, therefore, with a power which existed only in the aspirations of his royal hearer. Perhaps also, oriental influences were at work, awakening in the king aspirations which out-soared the actualities of life. Yet apart from these considerations, the reader of the Greek epic, in reliance upon a simple, unconditioned interpretation of the poems, must find in them a Senate and Agora existing as active and powerful members of the political organism.

(c) *The Boule.*

The Homeric *Boule* consisted of the inferior *βασιλῆς*, from whom the king of the city had been originally selected. Its object was to advise the king and assist him in the government. In its political capacity the *Boule* was not, as Grote says, a

<sup>1</sup> Gladstone, *Hom. and the Hom. Age*, III. p. 55; Schömann, *Antiquities of Greece*, p. 32; Buchholz, *Die hom. Real.*, II. 1. p. 7; *Od.* XI. 183 ff.; II. VII. 194 f.

<sup>2</sup> II. IX. 73; XXIII. 296 f.; XII. 310-21; *Od.* I. 392 f.; VII. 10 f.; Grote, ch. XX. (small edition) I. p. 323, (large ed.) II. p. 5; Gladstone, *op. cit.*, p. 59.

<sup>3</sup> Fanta, *op. cit.*, p. 53.

<sup>4</sup> Grote, ch. XX. (small edition) p. 323 f.

<sup>5</sup> Id. ch. XX. (small edition) I. p. 324.

purely consultative body.<sup>1</sup> On the contrary, the Greek epic tells us of a king not only listening to the advice of the *γέροντες*, but even yielding to them against his own judgment.<sup>2</sup> The authority belonged to the *gerontes* by primitive right and returned to them with the decay of royalty.<sup>3</sup> The *Boule*, therefore, was strong or weak in proportion to the weakness or strength of the king. Members of the *Boule* were reputed also of divine origin.<sup>4</sup> They must show the same wisdom, eloquence, and general personal merits as the king himself.

The probouleutic character of the Cleisthenean Senate of 500 goes back even to this *Boule*. Ordinarily, measures to be submitted to the popular assembly were first considered here; and the opinions of the leading *gerontes*, adopted by the king because of their evident wisdom,<sup>5</sup> generally prevailed. The same body aided the king in his administrative duties. As its powers and functions were not yet assigned to it by a written constitution, and as the government did not yet proceed according to clearly defined forms, the notion has arisen that the *Boule* was of far less importance in these branches of business than a closer study shows it to be.

While the *Boule* shared with the king in all the political functions of the state, it was no less active in the performance of judicial duties. The state had apparently not yet acquired the power of enforcing its judicial decisions, at least in cases of blood-guiltiness. Acting merely as an arbitrator between the parties concerned, it instituted judicial proceedings only at their request. Often the blood-feud prevailed, or a composition for money was accepted by the relatives of the slain. Gradually it became customary to refer such matters to the

<sup>1</sup> Grote, *op. cit.*, ch. XX. (small edition) I. p. 325.

<sup>2</sup> Gladstone, *Homer and the Homeric Age*, III. p. 94 ff.; Buchholz, *Die homerischen Realien*, II. 1. p. 17 ff.

<sup>3</sup> Buchholz, *op. cit.*, II. 1. p. 17. The term *γέρον* points to this, being connected, no doubt, with the clan-eldership.

<sup>4</sup> Schömann, *Antiquities of Greece*, p. 22.

<sup>5</sup> II. IX. 74-75.

state for arbitration ; and finally the central power acquired the authority to enforce its decisions.<sup>1</sup> The growth of this authority was aided by the right of asylum, which arose in the earliest times. There were certain sacred places in which the guilty party took refuge, and from which he could not be forced away without a gross violation of religious feeling in the community. These places varied with the nature of the offence. It came about in Attica that the criminal was tried in or near the asylum, prosecuted by his enemies—the relatives of the injured or slain—and defended by his friends.<sup>2</sup> The judges in such a case were members of the *Boule*, and here they probably first acquired power to execute the penalty. Here, too, arose distinctions as to procedure based upon the nature of the crime.

Mitigating circumstances in homicide were recognized by the Aryans.<sup>3</sup> It is perfectly natural that it should be so, and is in accordance with the archaic religious idea. Thus, the spirit of the slain held the willing murderer as an irreconcilable foe. Hence intentional homicide was unpardonable. But where the homicide was accidental, naturally the spirit of the slain could be satisfied by some compensation rendered to his relatives by the perpetrator. The distinction between intentional and accidental homicide seems to have been known to all the Greeks ; yet everywhere, except at Athens, without effect on the judicial system. Probably even in Athens, the Palladium and Delphinium did not originally exist, but were developed rather from this common idea, which among the Athenians was conceived much more sharply and concretely than elsewhere. The *Boule* originated with the confederation of the Ionic *phylae*, while these discriminations as to degree of blood-guiltiness came later. Homer says nothing of the internal affairs of Athens, and could not be expected to mention the courts, even though they had existed in his time. It is now

<sup>1</sup> Maine, *Ancient Law*, ch. X.; Hearn, *Aryan Household*, chs. XIX., XX.

<sup>2</sup> Köhler, *Hermes*, VI. p. 102 ff.

<sup>3</sup> Leist, *Altarisches Jus Gentium*, pp. 294 ff., 307 ff.

well established that the Homeric *Boule* was at Athens identical with the *Boule* of the Areopagus and that the latter exercised both judicial and general administrative functions.<sup>1</sup> Nothing is said in Aristotle's *Politeia* of the existence of the *Ephetae* in early times ; yet this is not strange, if indeed, as has been assumed, the court of the *Ephetae* was practically identical with the Areopagus. As the term *gerontes* points backward to the time of the isolated family or clan under the rule of the eldest, so the etymology of the word *Ephetae*, as proposed by Lange and approved by Gilbert,<sup>2</sup> calls to mind a period in history during which cases of homicide were settled by the kinsmen under their respective chiefs. According to Lange the word signifies "Those in authority over their kinsmen, οἱ ἐπὶ τοῖς ἑταῖς ὄντες." A mere conjecture as to the meaning of a word is an unsafe basis upon which to build an historical theory. The proposed derivation of this word, however, harmonizes perfectly with all the known facts in the case. At first the clan redressed its own wrongs. Afterwards when the state assumed the arbitration of such cases, it set apart for the purpose those who, as chiefs of their gentes, had long been accustomed to this very duty, which they now continued to perform as members of the king's council. Thus the *Ephetae*, in a body, exercised judicial authority as chiefs of their respective clans. There is little doubt that the court of the *Ephetae* existed before Draco ; but since its organization and procedure, as known to us, was ascribed to him by the ancients,<sup>3</sup> it is thought best to consider these topics in connection with the Draconian legislation.<sup>4</sup>

<sup>1</sup> Aristotle, *Ath. Pol.*, chs. 3, 8, 57.

<sup>2</sup> *Handbuch d. griech. Staatsalter.*, I. p. 121, n. 1. I may add that the required age of the *Ephetae* (above 50) connects them closely with the *gerontes* of the *Boule*.

<sup>3</sup> Decree of 409-8, *C.I.A.* I. 61.

<sup>4</sup> See p. 148 ff.

<sup>5</sup> On the Homeric *Boule*, see Gladstone, *Homer and the Homeric Age*, III. p. 94 ff.; Buchholz, *Die homerischen Realien*, II. 1. p. 17 ff.; Schömann, *Antiquities of Greece*, p. 23 ff.; Fanta, *Der Staat in der Ilias und der Odyssee*, p. 70 ff.; Mahaffy, *Social Life in Greece*, ch. II; Grote, ch. XX., (small edition) I. p. 325 ff., (large ed.) II. p. 9.

(d) *The Agora.*

The Agora was composed of all the adult male members of the state. This included the inferior ranks, so far at least as these were liable to military service. It was the privilege of all to hear the plan of king and nobles with reasons for its adoption, and to applaud the wisdom of their rulers. So long as there was no voting, this worked very well for the nobles. It did not immediately appear that the Agora thus wielded the supreme power of the state. But when the election of magistrates was instituted and the government began to move in sharply defined grooves, the nobles for the security of their own leadership, did their utmost to suppress the Agora, convening it only at the rarest intervals.

The Agora was summoned regularly by the king, but sometimes by a member of the *Boule*.<sup>1</sup> Order<sup>2</sup> was maintained by heralds. The business of the Agora was usually to listen to a plan already adopted by the *Boule*, members of which alone were regularly the speakers. Sometimes inferiors took part in the discussion, either of their own accord,<sup>3</sup> or invited by one of the *Boule*.<sup>4</sup> After discussion, the assembly approved by shouts of applause; or showed its dislike to the proposition by its silence.<sup>5</sup> The king might persist in carrying out a rejected plan; yet there was great danger that such would fail, owing to lack of support.<sup>6</sup> Usually, no doubt, he yielded to the popular will, whether the latter was directed by some noble,<sup>7</sup> or took its own course.<sup>8</sup> A remarkable feature of the assembly was the absence of the idea that the majority rules; after the decision each party went its own way.<sup>9</sup>

Every important business was brought before the Agora. Even in war, when secrecy ought to have been maintained, the king feared to enter upon any new plan without consulting

<sup>1</sup> Il. I. 54.<sup>2</sup> Il. II. 96 ff., 280.<sup>3</sup> As in the case of Thersites.<sup>4</sup> Il. I. 68.<sup>5</sup> Fanta, *op cit.*, p. 92.<sup>6</sup> Il. II. 192 ff.; XVI. 203 ff.; XIII. 108 ff.<sup>7</sup> Il. IX. 17 ff.<sup>8</sup> Od. IX. 44.<sup>9</sup> Od. III. 150; XXIV. 464.

the people. So, the more important judicial proceedings took place in the Agora. Here the members of the *Boule* delivered their opinions in order, and the judicial present went to him who gave the most righteous judgment.<sup>1</sup> The king probably pronounced the decision. In case of doubt, appeal was made to an oracle or resort was had to other means of learning the divine will.<sup>2</sup> The king could also make this appeal whenever he believed the people had rendered a "crooked" decision;<sup>3</sup> and in such a case the response of the oracle was final. The will of the gods was, therefore, the only power above the *κράτος*, or sovereignty, of the people on the special occasions when these chose to exercise it.<sup>4</sup>

(e) *Decline of the Basileia.*

With the founding of the city the Greek monarchy entered upon its last stage of development. The powerful nobles of the country united the small groups—families or *gentes*—over which they ruled, into the larger, or city unit, and delegated to one of their number some of the authority which they had formerly exercised each within his petty sovereignty; but reserved to themselves, a great, yet somewhat ill-defined and fluctuating power both as individuals within their respective spheres, and as a council for the entire city.<sup>5</sup> The overlord (*Basileus*) thus established, was only a chief among equals. In order to strengthen his power and to shake off the control of the *Boule*, he endeavored to elevate the inferior ranks and to weaken

<sup>1</sup> II. XVIII. 501 ff. The two talents must not be compared with the Attic talent. See Leist, *Graeco-italische Rechtsgeschichte*, p. 132.

<sup>2</sup> Leist, *op. cit.*, p. 135.

<sup>3</sup> Leist, *op. cit.*, p. 134.

<sup>4</sup> On the Homeric Agora: Schömann, *Antiquities of Greece*, pp. 25-7; Grote, ch. XX., (small edition) I. p. 325 ff., (large edition) II. p. 9 ff.; Howard, *Development of the King's Peace*, p. 10 f.; Buchholz, *Homerische Realien*, II. 1. p. 24 ff.; Gladstone, *Homer and the Homeric Age*, III. p. 115 ff.; Fanta, *Der Staat in der Ilias und Odyssee*, pp. 87-96.

<sup>5</sup> This is a type of the voluntary union of clans. Some modification must be admitted for other forms of clan combination.

the gentile organization.<sup>1</sup> The early history of Greece and Rome may be characterized as a war between state and gens. The king represents the former, the nobles, to a great extent, the latter. The partial triumph of the king, with the help of the Phœnician arts, fostered centralization and a vigorous national life. But the elements of oligarchy existed in the primitive constitution and were held in check only by the personal ability of the monarch. When it happened that the latter was too feeble to perform any of the duties devolving upon him by inheritance, the *Boule*, by undertaking their performance, gained thereby so much ground, which it was unwilling to yield to his successor. The first immediate step toward the downfall of royalty was taken when, in the reign of certain kings who were weak in war, a Polemarch, or commander-in-chief, was appointed by the *Boule* for the conduct of military affairs.<sup>2</sup> At first the Polemarch seems to have been appointed on occasions of need, but in time the office became permanent, and the department of war thus passed to the control of the Eupatrids. A further weakening of the royal power took place with the appointment of the Archon, whose original duties have not been stated, but who was undoubtedly an administrative magistrate. Aristotle is in doubt as to the time when this office was instituted. Most of his authorities placed it in the reign of Medon, son of Codrus; some, in the reign of Acastus, successor to Medon. An argument in favor of the latter view, he finds in the oath of the archons, viz., "to rule the state as in the time of Acastus." At any rate, the event occurred not long after the death of Codrus, and is closely related to the limitation of the royal

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<sup>1</sup> Fustel de Coulanges, *Ancient City*, pp. 314 ff., 319 ff.

<sup>2</sup> Aristotle, *Ath. Pol.*, ch. 3. He mentions Ion as having been sent for by the Athenians in a time of necessity. This was in the war between Erechtheus, king of Athens, and Eumolpus of Eleusis. Ion was made commander-in-chief of the Athenians, and has actually been called Polemarch; Schol. on Arist. *Aves*, 1527. For other references to Ion see Hdt. VIII. 44 and Paus. I. 31. 3; VII. 5. 1. The Polemarch is described as ὡς περ λοχαγὸς τοῦ βασιλέως by the Schol. on Plato, *Phædrus*, 235 D; cf. Wyse, *Class. Rev.*, V. p. 224; Sandys, *Arist. Const. of Ath.*, p. 7, notes.



power connected by tradition with his heroic self-sacrifice. The opinion that the *basileia* was abolished at the death of Codrus was clearly shown by Lugebil<sup>1</sup> to be false, even before the discovery of Aristotle's *Politeia*.

One would naturally infer from the mention of Codrus in Plato<sup>2</sup> and Aristotle<sup>3</sup> that his descendants continued to exercise the royal authority and that these authors knew nothing of its abolition at this time. Other authorities, much later and more untrustworthy, introduced the false notion which has crept into nearly every modern treatise on Grecian History. The title of *Basileus* was never abolished; but continued to be borne by the life-kings, then by the ten-year kings, and finally by one of the nine archons.<sup>4</sup>

The usual story goes on to say that the life-archon differed from the king in being responsible, — *ὑπεύθυνος*.<sup>5</sup> Now, Lugebil has attempted here also to find a misstatement, but without success. In the ordinary use of the term in the developed Athenian state, responsibility is inseparably connected with a limited period of office, and hence in this sense a life-king or life-archon could not have been responsible. But before the institution of temporary functionaries, the word, if it existed at all, must have had a different application. We have noticed a gradual subordination of the king to the *Boule*.<sup>6</sup> This began, we may safely say, long before the close of the so-called Heroic Age, since it has been observed that the *Boule* of the Odyssey

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<sup>1</sup> Staatsverfassung von Athen, p. 540 ff. Much of his reasoning is now unnecessary, and some of it unsound in view of the facts as lately ascertained. Yet his conclusion is just, and we may feel thankful to him for demonstrating the possibility of arriving at important truths through a masterly employment of scanty material.

<sup>2</sup> Symp. XXVII. p. 208.

<sup>3</sup> Politics, VIII. (V.) 10 (p. 1310b, 37).

<sup>4</sup> Cf. Paus. I. 3. 1.

<sup>5</sup> Paus. IV. 5. 10.

<sup>6</sup> Before the institution of temporary functionaries, responsibility signified nothing more than subordination to the *Boule*; cf. Busolt, Griech. Gesch., I. p. 400 f.; Lugebil, Jahrb. f. class. Philol., Supplb. V. pp. 539-564; Sandys, Arist. Const. of Ath., p. 6.

enjoys more power in comparison with the king, than the *Boule* of the *Iliad*.<sup>1</sup> The statement of Aristotle concerning the appointment of the Polemarch bears still more directly upon the question of responsibility. With the military force at their command, the Eupatrids were supreme, — the king was virtually under their control and could be called to account for his acts whenever the *Boule* should see fit. But while the king became in reality responsible to the *Boule* long before Codrus, it was not till the death of the latter and the appointment of another magistrate, the Archon, to share the king's remaining functions, that his responsibility became a recognized fact. At the death of Codrus, the *basileia* was made elective, yet the choice was restricted to the descendants of that king. Accordingly, there ruled twelve kings of the line of Codrus, holding office for life; the first being Medon, son of Codrus, the rest being all Medontidae. A thirteenth *basileus*, Alcmaeon, entered office as a life-king. But in 752 B.C. in the second year of his reign, the term of office was restricted to ten years.<sup>2</sup> At this point, the king became responsible — *ὑπεύθυνος* — in the sense of the term as it is employed by Attic writers, — he was obliged at the close of his period of office to give to his constituents an account of his administration, and became in this manner liable to punishment for abuse of his prerogatives. The government was now a *basileia* only in name. The king might no longer pursue a course of action in opposition to the *Boule*. Four ten-year kings were chosen from the Medontidae; but the fourth, Hippomenes, being deposed, it is said, for cruelty, the office was in 712 thrown open to the entire body of the Eupatridae. This was an important step in the direction of oligarchy, especially as it was essential to the cutting down of the term of office to one year, which occurred soon after. It also gave an opportunity for the selection of magistrates devoted to the *Boule*, and

<sup>1</sup> Fanta, *Der Staat in der Ilias und Odyssee*, pp. 70 ff., 81.

<sup>2</sup> Gilbert, *Hdb. d. griech. Staatsalter.*, I. p. 116; Grote, *History of Greece*, ch. X.; Fustel de Coulanges, *Anc. City*, p. 319 ff.

thus enabled this body to control the state without obstruction or opposition on the part of Codrid officials. For as long as the supreme magistracy belonged exclusively to the Codrids, the oligarchy was insecure, and liable to be overthrown by any occupant of the royal office, if gifted with more than ordinary ability, who might bend his energies to the restoration of the ancient *basileia*. The Eupatrids were thus relieved from this standing menace to their supremacy; and the ground was prepared for the final step to the abolition of kingship, and the establishment of oligarchy.

This entire period, beginning with the decline of royalty, is marked by a gradual concentration of power in the hands of the *Boule*. The *Ecclesia*, which, if the lower ranks were admitted as in the time of Homer, would have supported the king against the *Boule*, was seldom, if ever, convened. No popular elections were held; but the Areopagus acquired by degrees absolute control of the state, filling all offices by appointment, superintending the magistrates in the performance of their duties, inflicting fines and other penalties at its own discretion, regulating and supervising even the private conduct of the citizens.<sup>1</sup> The king was a man of its own choice, the minister of its policy. He still had charge of the "house-worship" of the state, and watched over its religious interests. He presided over those courts which tried cases of homicide, settled disputes between the clans, and superintended the mysteries and other sacred festivals. The Archon had for his chief duty the protection of property and of orphans, heiresses, and other persons in need of special guardianship.<sup>2</sup>

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<sup>1</sup> "The *Boule* of the Areopagus had as its constitutionally assigned duty the protection of the laws; but in point of fact it administered the greater and most important part of the government of the state, and inflicted personal punishments and fines summarily upon all who misbehaved themselves"; Aristotle, *Ath. Pol.*, ch. 3.

<sup>2</sup> Aristotle, *Ath. Pol.*, chs. 56-7. The functions exercised by the *Basileus* and Archon in Aristotle's day must have been inherited from the times of which we are now speaking.

The Archon was at first an inferior magistrate ; but before Solon he had superseded the king in authority. The Polemarch commanded the army and probably had charge, under the supervision of the Areopagus, of military affairs in general. The finances of the state were managed by the board of naucrars, subordinate no doubt, to the *Boule* of the Areopagus.<sup>1</sup> Thus four departments of administration were evolved, viz., war, finance, religion, and the protectorship of property and persons. The individuality of the governmental policy was thus weakened by the introduction of specialized functions. No man any longer held the reins of government, commanding all its resources ; but each within his narrow sphere of activity found it difficult to use the privileges of office for self-aggrandizement, or in defiance of the authority which had appointed him. The *Boule*, in effecting these improvements, while unconsciously laying the foundation of a definite constitution on which the most popular government was to be constructed which the world has ever known, was more immediately conforming to the general oligarchic principle, which represses individuality in the magistrate, distrusts genius and unusual talent, and tends, while trampling upon the rights of inferior classes, to reduce all within the narrow governing circle to the same dull mediocrity.<sup>2</sup>

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<sup>1</sup> See p. 109.

<sup>2</sup> Great effort to secure equality, Leist, *Graeco-italische Rechtsgeschichte*, p. 153 ; cf. Aristotle, *Politics*, V. 1. 3. This effort was the more necessary because of the strife among the oligarchs to gain the upper hand ; "for the instant an oligarchy is established, the promoters of it disclaim equality, and every body thinks he ought to be far above every body else" ; Thucydides, VIII. 89. It is also a well known fact that oligarchs were cruel and unscrupulous ; Thuc. VIII. 48. Coupled with their internal strife was the danger of their falling out with the people ; Aristotle, *Politics*, V. 1. 15 (p. 1301 b). This danger comes from their haughty, oppressive treatment of the lower classes. "An oligarchy while giving the people their full share of danger, not merely takes too much of the good things, but absolutely monopolizes them" ; Thuc. VI. 39. W. Wachsmuth, *Historical Antiquities of the Greeks*, I. p. 359, is of the opinion that while the archons, being organs of the Eupatridae, were narrowly limited in relation to them, they possessed almost unrestricted authority over the lower classes. Cox, *Greek Statesmen*, I. pp. 33-4.

has summed up admirably the forces at work in an oligarchy. Busolt, in Müller's Hdb., \*IV. pp. 31-3, traces briefly the transition from kingship to oligarchy; cf. Gilbert, Hdb. d. griech. Staatsalter., II. p. 271 ff. For limitation of the royal power after Codrus, see Paus. III. 5. 10. The ten-year rulers were also called kings; Paus. I. 3, and the Parian Chronicle; also Lugebil, Zur Gesch. der Staatsverf. von Athen, p. 550 and n. 15. The kingship was never abolished in Athens; Paus. I. 3. 1; Plato, Menex. 238 D. The date 752 is conjectural; for literature bearing on this point, see Busolt, Gr. Gesch., I. p. 406. The period of ten-year rulers lasted seventy years; Paterculus, I. 8. 3.

## CHAPTER VII.

### THE OLIGARCHY BEFORE DRACO.

682-621 B.C.

In 682 the chief magistracies were made annual, and a board of six *Thesmothetae* was added to the three principal offices already existing. Aristotle<sup>1</sup> tells us that the offices of *Basileus*, *Polemarch*, and *Archon* were filled at first for life and afterwards for ten years; but that the *Thesmothete* was never more than an annual magistrate, since this office was instituted many years after the archonship, when the custom of annual appointments had arisen.<sup>2</sup> Their duties were to record the laws (*θεσμία*) publicly<sup>3</sup> and to preserve them for use in the trial of offenders. The *Thesmothetae* were probably judges as well, though this is not stated by Aristotle; and the *thesmia* were merely rudimentary laws derived from their knowledge of unwritten usage or suggested by their actual experience in the management of cases.<sup>4</sup> Thus, the germ of a written code existed before Draco, — a fact hitherto unknown.

The *Basileus* held office in the Boucolium, so-called in Aristotle's time, situated near the Prytaneum; the *Archon* in the Prytaneum; the *Polemarch* near the Lyceum;<sup>5</sup> the *Thes-*

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<sup>1</sup> Ath. Pol., ch. 3.

<sup>2</sup> That the *Thesmothetae* came into existence immediately upon the institution of annual offices is not stated by Aristotle, but is well known from other sources. See Gilbert, *op. cit.*, I. p. 116, with n. 5.

<sup>3</sup> Sandys, *Arist. Const. of Athens*, p. 8, n. on *ἀναγράφαντες*.

<sup>4</sup> It is wrong, however, to call them "judicial decisions" as Kenyon (*Arist. on the Const. of Athens*, p. 6, n.) does. If the custom of recording judicial decisions had arisen in these early times, it would have continued through Attic history. But the Athenians never conceived this great idea, and their code suffered much in consequence; cf. also Holm, *Griech. Gesch.*, I. pp. 460-1; Sandys, *Arist. Const. of Ath.*, p. 8, n. on *θεσμοθέται*.

<sup>5</sup> Busolt, *Müller's Hdb.*, <sup>2</sup> IV. p. 132, n. 7.

*mothetae* in the Thesmotheteum. Not till the time of Solon did they ever act as a board, all meeting in the Thesmotheteum. This is the reverse of the theory formerly held, *i.e.*, that the functions of the nine archons were not specialized before Solon. I suppose that the Prytaneum was originally the office of the king, containing as it did the sacred hearth of the community, and serving, no doubt, as a place of assembly for the king's council, including the four tribe-kings. But when the king was deprived of his political functions, he was crowded out of the Prytaneum by the Archon,<sup>1</sup> but might return to its precinct with his *Phylobasileis* for the trial of animals and inanimate objects instrumental in homicide.<sup>2</sup>

The archons enjoyed absolute judicial competence within their respective spheres, and their decisions were without appeal. This does not signify that they were free from interference on the part of the Areopagus at the pleasure of the latter. Far from it. It signifies simply that they were not mere clerks, as in later times, whose duty it was to prepare cases for presentation to the popular courts; but were judges with full competence, whose authority could be overruled by the Areopagus in its capacity as a supervisory council and not as a court of appeal. The functions of the archons as exercised in later times must have developed from conditions already existing before Solon. Accordingly, we may safely assume that their chief duties were as follows:

1. The *Basileus* had charge of the state religion. He administered all of the ancestral sacrifices, superintended the mysteries, the Lenaeon *Dionysia*, and the torch-race. "Indictments for impiety come before him, or any disputes between

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<sup>1</sup> Cf. Gilbert, *op. cit.*, I. p. 118.

<sup>2</sup> Pseud. Dem. LIX. 75 f. The *Basileus* must be one who had married a maiden, that she might fill the office of priestess according to hereditary usage, and perform the sacred rites in behalf of the state. Every year on the twelfth of Anthesterium she went through the ceremony of marriage to Dionysus in the Boucolium according to an ancient ordinance. As queen, or priestess, she was called *Basilinna* or *Basilissa*.

parties concerning priestly rites; and he also determines all controversies concerning the privileges of the ancient clans and the priests. All actions for homicide come before him, and he it is who makes the proclamation requiring polluted persons to keep away from forbidden places. Whenever the king hears a case he takes off his crown. The king and the tribe-kings also hear cases in which the guilt rests on inanimate objects and the lower animals."<sup>1</sup>

2. The Polemarch was originally commander-in-chief of the army. He "performs the sacrifices to Artemis and to Enyalios, and arranges the contest at the funeral of those who have fallen in war." In his judicial capacity he had charge of all those cases in which an alien was concerned. This included "cases in which an alien is accused of deserting his patron or neglecting to provide himself with one, and also cases of inheritance and the protection of heiresses where aliens are concerned; and in fact, generally, whatever the Archon does for citizens, the Polemarch does for aliens."<sup>2</sup>

3. The Archon superintended the processions and contests of the *Dionysia* and *Thargelia*, after these were introduced, had charge of the processions in honor of Asclepius and Zeus the Savior, and performed other religious duties of lesser importance. But his most important function was the guardianship of property and of persons destitute of natural protectors. "As soon as the Archon enters office, he begins by issuing a proclamation that *whatever anyone possessed before he entered into office, that he shall possess and hold until the end of his term.*" The following judicial business came under his control: cases of injury to parents, orphans, widows, and heiresses, or their estates; cases of mental derangement, where a party charged another with destroying his own property

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<sup>1</sup> Aristotle, *Ath. Pol.*, ch. 57. To these functions we may probably add for this period presidency of the court which sat in the Prytaneum and had cognizance of cases of treason.

<sup>2</sup> Aristotle, *Ath. Pol.*, ch. 58.



through unsoundness of mind; the appointment of liquidators, where a party refused to divide property in which others had a share; the decision between rival claims to an heiress; and some other business of a similar nature.<sup>1</sup>

4. The remaining six archons, called *Thesmothetae*, were probably also judges, though the only function mentioned at this early time is that of recording the laws. Having in their hands the political and legal documents of the state, it came about naturally that they appointed days for trial, for political gatherings, etc.<sup>2</sup>

The Areopagus appointed to the office of archon only men of both rank and wealth. Evidently no re-election was permitted. At the close of their term of office, the archons must render an account to the *Boule*. If approved, they became life-members of the Areopagus. Formerly it was thought that this custom was introduced by Solon; but it now appears to have arisen as early as the institution of the nine archons. Thus the *Boule* of the Areopagus was composed at this time of the ablest and most experienced statesmen of Athens, all of the highest rank and wealth, all of conservative disposition. Its functions, as stated by Aristotle,<sup>3</sup> were now as follows:

1. It supervised the execution of the laws.
2. It performed the greater and more important part of the administrative duties of the state.
3. It had power, assigned to it by the constitution, to fine and punish all who misbehaved themselves. This apparently gave the Areopagus unlimited supervision over the citizens, enabling it to take action against immoral as well as lawless conduct. These are all administrative functions.

To these we may add: 4. Jurisdiction in cases of blood-guiltiness, exercised on the Areopagus, or, through the

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<sup>1</sup> Aristotle, *Ath. Pol.*, ch. 56. It is probable that the Archon stood third, or at least second, in the list till about the time of Solon.

<sup>2</sup> *Id.* ch. 59.

<sup>3</sup> *Id.* ch. 3; cf. Isocrates, *Areop.*, 42, who agrees perfectly with Aristotle.

*Ephetae*, in the other courts, according to the nature of the offense.<sup>1</sup>

What has been said in the preceding chapter of the absolute rule of the Areopagus applies with still greater force to this period. Much had been gained by the introduction of annual magistracies. No matter now what the personal ability of the officer might be, or what his desires and motives, he was practically debarred from the assertion of these and forced into those lines of policy, which the *Boule* had drawn for him, by the very shortness of his term of office. Within so brief a period he could carry out no independent plan; nor could he so collect his resources and strengthen his position as to maintain himself permanently in office against the will of his constituents. The multiplication of officials and the institution of annual magistracies may be explained superficially by the greed of the Eupatrids for office; but, in my opinion, the cause lies far deeper than this. The security of an oligarchy, as has been said, demands that all who share in the privileges of government shall be peers. Any disturbance of this equilibrium sets up a tendency in the direction of monarchy or democracy. This is the principle by which the Eupatrids were, more or less consciously, actuated.<sup>2</sup>

This period is especially barren of events. It is not that the narrative of this epoch has been lost, but rather that no events occurred of such importance as to call forth a singer of epics or writer of history. The government lost in centralization by the downfall of royalty, and hence in vigor of action. It was unlikely under a system tending to mediocrity and the suppression of individual genius that any important enterprise should be undertaken or effectually accomplished; and as there

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<sup>1</sup> Aristotle does not mention this function here, but it certainly existed at this time, as is well known from other sources. He discusses the Areopagus here only as an administrative body.

<sup>2</sup> Aristotle, *Politics*, V. 6 (p. 1305 a, 36 ff.), sets forth the extreme instability of oligarchies.

was but little national life, there could be but little national history.<sup>1</sup>

Strife between Eupatrids and Plebeians must have arisen in the earliest times. The causes of discord will be explained in detail hereafter. Nor was everything peaceful and harmonious within the governing party. The Eupatrids were split into factions ; and in the turmoil and confusion which thus arose, it was often impossible to make out which faction represented the government. It was natural that some ambitious person should take advantage of this state of things to usurp the reins of government and establish a despotism. Unfortunately, we have no means of determining Aristotle's view as to the underlying causes of the Cylonian movement. In the absence of Aristotle's testimony which might give us clearer light, I cannot help believing, on a consideration of the attendant circumstances, that the movement, though necessarily factional to some extent, was, in the main, of an anti-popular nature. Certain Eupatrids, seeing the gentile organization of the state crumbling to pieces through internal decay, and assailed without by the Plebeians, — rich and poor in combination, — and hoping by temporary employment of the tyranny, to re-establish the oligarchy on a firmer basis, had recourse to a violent reactionary measure. This they did by favoring a man who was known to be an enemy of popular rights, and who would, accordingly, as they supposed, serve as a tool in their hands for putting down the *πληθος* and re-establishing the oligarchy on its old foundations. He was Cylon, an oligarch of the old stamp, a victor in the Olympic games, son-in-law of Theagenes, tyrant of Megara.<sup>2</sup> Supported by a band of companions and a force

<sup>1</sup> Authorities for this period as heretofore treated are Fustel de Coulanges, *Ancient City*, pp. 314-335 ; Curtius, *History of Greece*, I. pp. 327-334 ; Thirlwall, *History of Greece*, II. pp. 2-27 ; Grote, ch. X., (small edition) I. pp. 556-576 ; (large edition) II. pp. 422-459 ; cf. also pp. 384-394 ; Schömann, *Antiquities of Greece*, pp. 311-327 ; Gilbert, *Hdb. d. griech. Staatsalter.*, I. pp. 115-123, and II. pp. 271-280 ; Pauly, *Real-Encyclopaedie* ; and Smith's *Dictionary of Antiquities*, s. v.

<sup>2</sup> Thuc. I. 126.

borrowed from Theagenes, he seized the Acropolis. But the Alcmaeonidae, heading the people from the country, besieged the Acropolis and starved the adherents of Cylon into submission, the would-be tyrant and his brother having effected their escape. The Alcmaeonidae were prosecuted by Myron, probably an adherent of the Cylonian party, before a court of 300 composed wholly of oligarchs (*κριθῆναι τριακοσίων ἀριστίνδην δικαζόντων*).<sup>1</sup> Condemned for sacrilege, the Alcmaeonidae, themselves and their race, were banished forever, while even the bodies of their dead were cast forth from the tomb. Returning, they were again expelled by the Lacedaemonians, who continued even after the lapse of two centuries to persecute the family chiefly instrumental in suppressing the insurrection. The Cylonian tumult occurred in one of the Olympic years between 640 B.C. and the archonship of Aristaechmus, probably in 628 or 624.<sup>2</sup> The trial of the Alcmaeonidae and the purification of the state by Epimenides of Crete probably occurred much later, since Plutarch connects these with the reforms of Solon.

That the Cylonian insurrection was indeed an oligarchic reactionary movement, is indicated by the main circumstances of the event. I shall recapitulate them as follows :

1. Thucydides<sup>3</sup> seems to emphasize the fact that Cylon belonged to a family distinguished for its nobility and wealth. He was not, as Peisistratus, one of the younger nobility, who were in favor with the people; but a thorough-going representative of the blue-blooded Eupatridism, with its caste-like exclusiveness and haughty pride of birth.

<sup>1</sup> Plut., Solon, 12.

<sup>2</sup> Busolt, *Griechische Geschichte*, (1885) I. p. 498, n. 8 and p. 505, placed the date before Draco. He was followed by J. H. Wright, *Proceedings of the American Philological Association*, 1888, p. xxvi.; cf. F. D. Allen, *The Nation*, March 5, 1891, p. 197. Busolt's remarkable conjecture is now confirmed by Arist., *Ath. Pol.*, ch. 1; cf. Sandys' notes on this chapter.

<sup>3</sup> I. 126, *Κύλων . . . τῶν πάλαι εὐγενῆς τε καὶ δυνατός*. It must be admitted, however, that *πάλαι* may refer to the time of Kylon's life and not to the age of his family. Busolt, *Griech. Gesch.*, I. p. 504, places his family next in importance after the Philaidae and Alcmaeonidae.

2. His procedure was exactly opposite to that of the champion of popular rights. Herodotus<sup>1</sup> says that he attached to himself his club-mates. These, of course, were oligarchs, sharing the sentiments of their leader. Peisistratus, on the other hand, obtained, as the first step toward the tyranny, a body-guard of common people.

3. Thucydides says he received a force from Theagenes. As the rank and file of the Athenian army consisted largely of the inferior classes, he could not rely upon the support of the military force at home, but must seek this aid from abroad. Had the people favored him or even shown indifference, it would have been unnecessary to bring in foreign troops. The Athenians were at this time apathetic in relation to their political interests,—as the sedition law of Solon shows—and unless he was actually known to be opposed to their interests, he could have counted on their neutrality.<sup>2</sup>

4. He was opposed by the Alcmaeonidae who were champions of the people through all Athenian history.

5. The people came from the country to suppress the insurrection. This fact alone seems to prove that the movement was anti-popular. We can hardly think that the *δημος* so oppressed, would rally for the protection of their masters, and we are dealing here with a strife, not so much between the government and a body of insurgents, as between two political factions. It is wrong to suppose that the Alcmaeonidae called out the *δημος* merely as representatives of the government.

6. The prosecutors of the Alcmaeonidae must have been Eupatrids, for these alone knew the sacred law;<sup>3</sup> and that the

<sup>1</sup> V. 71. Busolt, *op. cit.*, p. 505, n. 2, is far from satisfactory.

<sup>2</sup> Thumser, *Griech. Staatsalterthümer*, p. 345, assumes without a grain of evidence that Cylon was at first supported by the common people, who, however, turned against him when they discovered his real design. All the evidence points to the view of Landwehr, which I have followed.

<sup>3</sup> Notwithstanding the fact that the *Thesmothetae* were appointed to record the laws even before Draco, it is most improbable that the sacred law was at this early time open to the Plebeians. Plutarch, Solon, 12, states that it was the faction of Cylon which, growing strong, quarreled continually with the Alcmaeonidae, thus confirming the view that the Cylonian movement was oligarchic.

court was composed of men of the highest rank has been expressly stated. And further, the prosecution was supported by Sparta, who would not lend aid to a mere factional chief; but who would gladly uphold the oligarchs in any attempt, however violent, to strengthen their decaying authority.

7. I am aware that all these arguments together do not demonstrate the view proposed. But they do show it to be possible or even likely. Why should not the oligarchs place their hopes in Cylon, as afterwards they placed their hopes in Solon? In the latter case we are not left to reason from circumstances; but he tells us in his own words that his friends advised him to set up a tyranny, and Aristotle states that the Eupatrids expected Solon to re-establish them in their ancient authority. This much, therefore, is undisputed, that the Eupatrids did, in the case of Solon, attempt to effect an oligarchic reaction through the tyranny. It may be also that the same thing was attempted through Damasias. Probably, then, this tendency began earlier, manifesting itself in the Cylonian movement, and continuing until the democracy was firmly established. Not every tyranny is a popular tyranny; and in the political harangues which preceded an ostracophory, oligarch and tyrant were not discriminated. It is much more reasonable to suppose that the attempt of Cylon belonged to a general movement than to regard it as a mere accident out of all connection with the tendencies of the age.

This is the last recorded event in the history of the absolute oligarchy at Athens. The causes of its overthrow will be set forth in the succeeding chapter.<sup>1</sup>

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<sup>1</sup> On the Cylonian conspiracy: Hdt. V. 71; Thuc. I. 126; Plut., Solon, 12; Plass, *Die Tyrannis*, I. pp. 177-184; Grote, *Hist. of Greece*, ch. X. (latter part); Curtius, *History of Greece*, I. pp. 334-8; Cox, *Greek Statesmen*, I. p. 13; Oman, *History of Greece*, p. 104; Landwehr, *Philol.*, Supplb. V. pp. 157-8; Busolt, *Griech. Geschichte*, I. p. 504 ff.; Müller's *Hdb.*, <sup>2</sup>IV. pp. 135-6; Thumser, *Griech. Staatsalterthümer*, p. 344 ff.

## CHAPTER VIII.

### THE DRACONIAN TIMOCRACY.

Aristotle now mentions the strife between nobles and commons, which he says continued a long time.<sup>1</sup> His history reveals to us the condition of the peasantry, heretofore but imperfectly known. "The government was in general an oligarchy, and especially in this fact, that the poor were slaves to the rich, themselves, their wives and children, and were called clients — *πελάται* — and *ἐκτήμεροι*, since they tilled the fields of the wealthy for that amount of rent.<sup>2</sup> All the land

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<sup>1</sup> Ath. Pol., ch. 2.

<sup>2</sup> This reading is supported by three strong arguments. (1) Clientage existed also among the Hindoos, where the *Shannivartani* paid one-sixth of the produce to the owner of the land thus worked. The number one-sixth could hardly have arisen by chance among both Greeks and Hindoos. It appears likely, therefore, that the number was Aryan, and that *Shannivartani* and *Hectemori* were equivalent terms. This argument is reinforced by the fact that the *Shannivartani* worked with a pair of steers borrowed from the master and were thus distinguished from a higher class who had a pair of steers of their own, just as the *Hectemori* were distinguished from the *Zeugitae*. Thus there is a close connection between the so-called Solonian property classes and the Hindoo classes based on occupation, showing that the two sets of classes have, in part at least, a common origin. See p. 84 f. (2) Plutarch, Solon, 13, says that the *Hectemori* paid one-sixth of the produce. Some attempt to amend this passage; yet these may be answered in the words of Professor B. L. Gildersleeve, "An ounce of MS. is worth more than a hundred-weight of conjectures": (3) The word just below signifies "*rent*." This is, therefore, the meaning of the word in the sentence before us, since it is altogether improbable that the same word should have opposite meanings in the same paragraph without notice being given. This chapter from Aristotle was probably Plutarch's only source of information, and his interpretation is intelligent and accurate. On the other hand, Photius, who confessedly relies upon Aristotle, has misinterpreted the passage, declaring that the *Pelatae* and *Hectemori* are "those who served for hire" and again that "they tilled the land for a sixth part of the produce." Pollux, III. 82, adheres to the same view. Victor Thumser has followed these late authorities in his statement that "the

was in the hands of a few, and if ever the tenants failed to pay the rents due they could be sold, both themselves and children." And Plutarch says, "The disparity of fortune between the rich and the poor had reached its height at that time,<sup>1</sup> so that the city seemed to be in a truly dangerous condition, and no other means for freeing it from disturbances and settling it, seemed possible but a despotic power. All the people were indebted to the rich; and either they tilled the land for their creditors, paying them a sixth part of the increase, and were, therefore, called *Hectemori* and *Thetes*, or else they engaged their body for the debt, and might be seized, and either sent into slavery at home or sold to strangers; some (for no law forbade it) were forced to sell their children, or fly the country to avoid the cruelty of their creditors."<sup>2</sup> From a comparison of the two passages it appears that there were two degrees of serfdom before actual slavery was reached: *first*, that of the tenant paying his quota of produce yearly and enjoying a certain liberty, yet probably attached by birth to the estate of his patron;<sup>3</sup> *second*, that of those who had mortgaged their own bodies or those of their wives and children to their creditors.

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*Hectemori* were not renters but laborers for hire"; Zeitschrift für die österreichischen Gymnasien, 1892, p. 506. Now that we are able to trace all these statements to their common source, we may safely venture an independent interpretation of our original authority, with greater satisfaction, however, in that our interpretation is supported by Plutarch. An argument in favor of the opposite view is that a man who pays but a sixth part of the produce as rent cannot be in desperate circumstances. With so many conditions unknown, it is extremely hazardous to emend texts and introduce violent readings on the basis of such an argument. Poste and Sandys (Arist. Const. of Athens, p. 5) have translated the passage correctly. For the opposite view, see translations of ch. II. by Kenyon, Arist. on the Ath. Const.; Kaibel und Kiessling, Arist. Staatwesen d. Athener; Erdmann, Der Athenerstaat; see also Busolt, Müller's Hdb., <sup>2</sup>IV. p. 136, and Thumser, Die griech. Staatsalterthümer, pp. 335-6. Cf., however, Gomperz, Die Schrift vom Staatwesen der Athener, pp. 45-8.

<sup>1</sup> Just before Solon's Archonship.

<sup>2</sup> Plutarch, Solon, 13.

<sup>3</sup> This appears from Aristotle's statement that "themselves and children and wives were in slavery to the rich," and Plutarch's statement that "all the people were indebted to the rich."



This condition was reached when they failed to pay the quota due. Arrears of rent were charged as debt against the delinquent; his person, and the persons of his family were taken as security and were liable to seizure on failure of redemption.<sup>1</sup> Many, however, must have borrowed money, for the redemption of their persons, from the capitalists among the *Demiurgi*.<sup>2</sup> This did not alter their condition, but merely exchanged an old master for a new, and possibly deferred the day of actual slavery.

This difficult subject is further complicated by the question as to the real meaning of the *ῥοι* mentioned in Solon's poems.<sup>3</sup> These were found standing in many places holding the "black earth" in slavery. Solon removed them, setting the land free. Cox has maintained that the *ῥοι* were boundary stones sacred to the gods of the Eupatrids, and binding to their authority and ownership the lands thus marked out, together with all moveable property connected therewith as well as slaves and even clients. By removing these pillars, Solon set both land and people free. This view assumes that the clients became through Solon's relief measures, proprietors of lands formerly worked for others, and implies necessarily a re-distribution of property. But such re-distribution is denied by Aristotle;<sup>4</sup> and the theory of Cox becomes untenable in consequence. The only view remaining is that they were real mortgage pillars and this, in turn, demonstrates the existence of a class of peasant proprietors distinct from the clients. This class may have contained the poorer and less noble Eupatrids, but was, in my opinion, composed for the most part of those who had once been clients, but had, under the wise and liberal patronage of the kings, become free and acquired property, just as the Plebeians at Rome. These were now, in a time of economic distress, relapsing into serfdom

<sup>1</sup> The same condition of things prevailed in early Rome; Ihne, *History of Rome*, I. p. 109.

<sup>2</sup> This appears from Aristotle, *Ath. Pol.*, ch. 13.

<sup>3</sup> *Id.*, ch. 12; Bergk, *Anthol. Lyr.*, Frag. 32 (25). 5.

<sup>4</sup> Aristotle, *op. cit.*, ch. 11.

similar to that from which they had emerged. If this view is correct, the peasant proprietors must have formed a numerous class, since the mortgage pillars were found standing in many places; and the creditors, in this case, must have been the *Demiurgi*. To sum up the whole argument, there were two classes of the poor: first, the clients who had never been free owners of real estate but who, as in Aryan times, worked the lands of the rich, paying as rent a quota of the produce; and second, peasant proprietors, who had once been clients and were now returning, through debt, to their former condition. It need not be supposed that the capitalists were accustomed to lend money only to the latter class. The clients themselves, to escape immediate slavery in default of payment of their quota, probably borrowed money of the *Demiurgi* on security of their persons and those of their families, with which to satisfy the claims of their masters. Such action merely deferred the day of actual servitude, the bondage beginning legally at the moment when security was given. According to Athenian usage, the holder of a mortgage was hypothetical owner of the property under pawn, and enjoyed its use till the liquidation of the debt.<sup>1</sup> The free proprietors, therefore, whose lands were now mortgaged, differed but little from the clients, who had never owned land. They paid the same quota of produce, and were also called *Hectemori*. Aristotle does not, therefore, discriminate between the two classes, it being unessential to his purpose. It is apparent then that the chief cause of the trouble lay in the nature of clientage, and that the mortgaging of free-holds was an attendant circumstance. The suffering of the peasants was augmented by the rise of commerce and the transfer of national activity from husbandry to manufacturing and mercantile industries. Corn could be imported more cheaply than it could be raised. The peasant found no market for his produce, while such necessities as he must purchase rose in price to a height altogether beyond his means. Perhaps successive failure of

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<sup>1</sup> Demosthenes, XXX. 26-29.

crops added to his distress. The clients could no longer pay their quota, and the freeholders were tempted to mortgage their farms to the capitalists. The results have been stated.

But economic distress was not the only ground of discontent. Civil and political disability of the inferior ranks, inseparably connected with the gentile system, provoked a complaint scarcely less loud and bitter.<sup>1</sup>

Aristotle<sup>2</sup> says: "Now it was for the multitude the hardest and most bitter thing in the constitution that they should be in slavery. Not but that they had other motives to indignation, for they were excluded, so to speak, from everything." This "*everything*" signifies not merely political rights, but social, religious, and civil privileges as well. The feeling would not have been so bitter, were they as well governed as in former days. But the king, their patron, was no more, and the haughty Eupatrids, enthroned in office, and claiming an exclusive right to legal and religious knowledge, turned these overwhelming advantages to the oppression of their inferiors.<sup>3</sup>

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<sup>1</sup> It is a fact worth noting that although the historians of Rome lay the whole blame of internal strife upon debt and excessive military service, no measures were taken for the relief of these evils; but the entire work of reform had for its object the social, civil, and political equalizations of the orders. We are able now to emphasize this fact in relation to Attic history, *viz.*, that debt was not the only burden of the early Athenian of humble rank.

<sup>2</sup> Aristotle, *Ath. Pol.*, ch. 2. The Ms. is mutilated here. Kenyon supplies ἀρχῶν μετέχειν and renders, "that they had no share in the offices then existing under the constitution." This is obviously wrong, since the sentence in question is a resumption of what precedes and not an altogether new statement, and since no mention is made of offices above. Herwerden and Leeuwen have supplied τὸ τῆς γῆς μὴ κρατεῖν, with more reason, since it is stated immediately above that "all the land was in the hands of a few" and the inference is certain that the oligarchic constitution debarred the many from the privilege or power of acquiring land. Yet it is more probable that τὸ δουλεύειν, the suggestion of Kaibel and Wilamowitz-Mollendorff, is the correct reading, since it is distinctly stated above that the slavery of the masses is one of the conditions of an oligarchic constitution. This reading is adopted by Keil, *Verfassungsgesch. Athens*, p. 15, and Sandys, *Arist. Const. of Athens*.

<sup>3</sup> At Rome the condition of the Plebeians was improved by the kings, but became much worse under the oligarchy; Mommsen, *History of Rome*, I. pp. 130-1; Ihne, *Early Rome*, p. 116. There is no doubt that this is true also for Athens.

The Eupatrids had, from the very beginning, considered it an insult to their gods that a stranger should know the formulae of their worship. And since in early times no clear distinction was made between civil law and religious precepts, their monopoly naturally was made to cover both fields of knowledge. The king had based his authority upon direct inspiration; the Eupatrids had as safe a stronghold in their monopoly of the knowledge of law. It is well known that the rulings of the courts were swayed by bribery and favoritism. In every way the Eupatrids were failing in their duties, and in their dealings with the *πλῆθος* were actuated by no religious scruples or generous feelings. There was corruption in the courts, grinding oppression in the executive offices, avarice and insolence in the dealings of lord with client, dissension within the ranks of the nobles, and the multitude threatening outbreak. Something must be done to save the state.

In the archonship of Aristaechmus,<sup>1</sup> 621 B. C., Draco, probably a Thesmothete,<sup>2</sup> drew up a code of laws. In view of the conflicting opinions now prevalent as to the nature of his work, it is deemed best to present the testimony of Aristotle's Athenian *Politeia*, ch. 4, and to use this as the basis for a general consideration of the subject. "Such was in outline the first *politeia* (*πρώτη πολιτεία*); but not long after this, in the archonship of Aristaechmus, Draco drew up his laws (*θεσμοὺς ἔθηκεν*). The arrangement was now (*αὐτῇ*) as follows. The *politeia* (*ἡ πρώτη*) had (already) been granted to those who were accustomed to furnish their own panoply in war. They elected by vote, as provided by the Draconian *θεσμοί*, the nine archons and treasurers from those possessing an estate worth not less than ten (?) *minae* free from encumbrances. The other inferior offices were filled from the heavy-armed. The generals and hipparchs must possess an estate free from en-

<sup>1</sup> Aristotle, *Ath. Pol.*, ch. 4.

<sup>2</sup> Paus. IX. 36. 8: *Δράκωντος Ἀθηναίου θεσμοθετήσαντος*. Grote, accordingly, regarded Draco as a Thesmothete. That this is the correct interpretation seems probable, now that the early function of the Thesmothete is known.

cumbrances worth not less than a hundred *minae* and must be fathers of children above ten years of age, born of a lawful marriage. (All these officials seem to have been subject to the *euthyna* at the expiration of their term of service.<sup>1</sup>) A *Boule* of four hundred and one, chosen from those enjoying the *politeia*,<sup>2</sup> was to exercise deliberative functions.<sup>3</sup> These and the other (inferior) offices were filled by lot from the citizens above thirty years of age. It was permitted to no one to hold office a second time till all the rest had served their turn, — then the process of casting lots from the whole number began anew.<sup>4</sup> If a senator was absent from a session of the senate or assembly, he had to pay, if a *Pentacosíomedimnus*, a fine of three *drachmae*; if a *Hippeus*, two, and if a *Zeugite*, one *drachma*.<sup>5</sup> The *Boule* of the *Areopagus* was guardian of the

<sup>1</sup> The text is corrupt here.

<sup>2</sup> It appears that the members of the Draconian *Boule* were not chosen equally from the four tribes, and that Solon, in ordaining that 100 senators should be selected from each tribe and thus bringing in the democratic *εὐνομία*, actually created a new *Boule*; Keil, *Verfassungsgeschichte Athens*, p. 95. Sandys, *Arist. Const. of Athens*, p. 16, n. on *βουλευεῖν*, is wrong in supposing that the odd number (401) is "mainly characteristic of later times," since the 9 archons, the 51 *Ephetae* and the Eleven (*οἱ ἑνδεκά*) go back to this time; Keil, *op. cit.*, pp. 96-7.

<sup>3</sup> The *Areopagus* was at this time a general administrative body without definite functions. It could not, therefore, have exercised probouleutic functions. With the revival of the *Ecclesia* came naturally the institution of a pre-considering *Boule*, if, indeed, this body did not already exist, in some form, before Draco.

<sup>4</sup> The idea that all the qualified could in turn be chosen by sortition for office, with the possibility of a repetition of the process, must have arisen in a small state, such as Athens was in Draco's time and earlier. On the other hand, it need not be assumed that any were obliged to become candidates. Sandys, *Arist. Const. of Athens*, p. 17, makes, on this point, a wrong use of *Arist., Politics*, VI. (IV.) 14 (p. 1298 a, 14), following *Class. Rev.* V. p. 168 a. It is, indeed, characteristic of the oligarchic spirit *μη εἶναι λέγειν πάντας εἶη μηδὲ βουλεύειν* ([Xen.] *Rep. Ath.*, I. 6), where *πάντας* includes the whole population. In every oligarchy, however, great effort is made to secure equality among the oligarchs themselves; cf. H. Jackson, *Class. Rev.*, V. p. 107.

<sup>5</sup> The objection has been made to this statement that fines were paid in cattle, not in money; cf. F. Cauer, *Aristoteles als Historiker*, *Deutsche Zeitschrift für Geschichtswissenschaft*, (1892), VIII. p. 4, relying upon Pollux, IX. 61. It is ridiculous to suppose, however, that a man should be fined an ox or even a sheep or lamb for a day's absence from the *Ecclesia*. Again, Aristotle, *Ath. Pol.*, ch. 10,

laws and kept watch over the magistrates to see that they ruled according to the laws. And it was permitted anyone who was injured, to lay an information before the Areopagus, citing the law in violation of which he felt that he had been injured." Such is the Draconian constitution as presented in the fourth chapter of Aristotle's *Politeia* of the Athenians. Before the discovery of this treatise it was the universal belief that Draco made no change in the existing constitution.<sup>1</sup> The chapter before us presents him, according to the interpretation of Kenyon,<sup>2</sup> as the author of important political innovations. Others regard the greater part of this chapter as an interpolation.<sup>3</sup> I desire to show that, regarding the passage as genuine,

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speaks of the didrachm being in use before Solon. Fines due to the public treasury, and, especially, small fines, were probably paid in this currency, while compensation to an individual for unintentional homicide, and possibly heavy fines to the treasury, may have been payable in oxen; cf. Sandys, *Arist. Const. of Athens*, p. 17, n. on *ἐκλείπει τῇ συνόδῳ*; Busolt, *Philologus*, 1891, p. 399.

<sup>1</sup> "Draco has left laws, but he adapted them to a constitution which already existed, and there is no peculiarity in them which is worth mentioning, except the greatness and severity of the punishments"; Aristotle, *Politics*, II. 12. 13 (p. 1274 b, 15 ff.). The genuineness of this whole chapter has been called into question; yet we are certain that Aristotle considered Draco's laws very severe. See *Arist.*, *Rhet.* II. 23. 29 (p. 1400 b, 21). On the other hand, mention is made of "Draco's constitution" along with that of Cleisthenes in *Pseud. Plato, Axiochus*, 365 D; see Busolt, *Müller's Hdb.*, <sup>2</sup> IV. p. 138 n. 1. The author of the *Axiochus* may have drawn his information from Aristotle, *loc. cit.*, or from some source unknown to us. Draco's constitution may have been known in outline, at least, in 411, so as to serve as a pattern for the oligarchic constitution of that year. The latter, indeed, resembled the constitution which is known (apart from the *Ath. Pol.*) to have existed before Solon rather than that of Cleisthenes. See *Ath. Pol.*, ch. 29. It is fair to assume that the makers of the constitution of 411 used this outline, filling it in with various details, and that a later writer might be betrayed into bringing some of these details into his description of the Draconian constitution.

<sup>2</sup> Second ed., *Intro.*, pp. xxiii-xxiv.

<sup>3</sup> *E.g.*, E. S. Thompson in *Classical Review*, vol. V. p. 336. Headlam (*ibid.*, p. 168) supposes that the matter found here was taken from the account of the Four Hundred, ch. 30. It may be said with more probability that the pre-Solonian constitution served as a model for the later oligarchy. It is absurd to call the probouleutic functions of the senate of this time "an anachronism" when such functions were exercised even by the Homeric *Boule* though in an informal manner.

Draco did not materially affect the existing constitution. We have seen that in the Homeric Age the Agora was composed of those who were liable to military service. The Athenian Ecclesia was composed, accordingly, not of Eupatrids alone but of the *Agroeci* and *Demiurgi* also who served in the heavy-armed. If this is true, Draco did nothing to widen the range of citizenship. In perfect accord with this view, it is stated that the "*politeia* had (already) been given to those who furnished a panoply in war." Again, the *Boule* of 401, mentioned in this chapter, may have existed, in some form, before Draco, just as it has been thought by some, with good reason, that a *Boule* larger than that of the Areopagus existed before Solon.<sup>1</sup> Now, these are the main points affecting the constitution; and if Draco made no technical change in these two points, it may be said with truth that he "adapted his laws to a constitution already existing." On the other hand, no one can deny that he modified the constitution in certain respects. Thus, the codification of the laws was a most important step in the history of the government, far more important, indeed, than the institution of a new *Boule* like that of the Four Hundred and One. This is, accordingly, mentioned as his chief work, — the characteristic feature of his constitution.<sup>2</sup>

No new light is thrown upon the nature of his laws.<sup>3</sup> We are left, in consequence, to rely upon the few hints given by

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<sup>1</sup> Philippi and Lange believed in the existence of such a *Boule*. This they endeavored to identify with the court of 300, which tried the Alcmaeonidae. This number as well as the number 400 may have stood in some approximate relation to the number of gentes. Gilbert, *Hdb. d. griech. Staatsalter.*, I. p. 123, admits the possibility of this, but states that we have no evidence.

<sup>2</sup> Aristotle, *Ath. Pol.*, ch. 41. The writing of the laws is here given as the distinguishing feature of his work. In ch. 4, the phrase *θεσμοὺς ἔθηκεν* suggests an actual law-making activity, corroborated by Aristotle's *Politics*, II. 12. 13 (p. 1274 b, 16).

<sup>3</sup> That Aristotle was writing a history of the constitution and did not think it in place to discuss laws which had no political import is not an altogether satisfactory explanation of his silence here, since in other parts of the treatise he frequently introduced non-constitutional matter. We might better take his own reason, that he saw nothing in them worthy of notice, except their extreme severity.

other authorities. The notion that his laws were "bloody" is erroneous, though they were severe compared with the code of Athens at a later date. It is doubtful whether he introduced any important changes in existing usages.<sup>1</sup> Those relating to homicide were not contrived by an individual, but developed gradually from the religious beliefs of the ancients. Theft, under his laws, was punishable by death, and this is taken as a proof of their severity; but we know that every offense was not so punished. We read of a number of cattle being the penalty in certain cases,<sup>2</sup> and in others it was short exile without confiscation of property. The influence of the Draconian code was unspeakably great, both for a clearing up of

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<sup>1</sup> Many writers, as Grote, *History of Greece*, ch. X (large edition) II. pp. 447-8, are of the opinion that Draco had no power of legislation, but merely reduced to writing the existing customs. It is surprising, indeed, that a view so ill-supported should have met with so great favor. In the first place, there is not the slightest evidence for the theory in the ancient writers; but all, on the contrary, who have occasion to speak of Draco regard him as responsible for the laws which pass under his name. Again, there is much collateral evidence against the theory. *First*, the earliest Greeks believed that kings received their laws from Zeus. Accordingly, in those times, legislative power was not exercised by the people (or even consciously influenced by them), but was vested in an individual enjoying, in his legislative capacity, unlimited authority. The most noted legislator of this class was Minos; *Od.* XIX. 178. *Secondly*, on the borderland between myth and history appear certain great legislators, each inspired and directed by some deity; as Zaleucus, by Pallas Athena, and Lycurgus, by Apollo. The laws of these, being divine declarations, were accepted without modification by the people. It matters not whether these cases are historical or mythical, they disclose the early conception of law and law-maker, and must have exercised a determining influence upon methods of legislation. *Thirdly*, the gift of unlimited authority was bestowed upon Solon together with his commission to draw up a new code and constitution. Cleisthenes apparently enjoyed the same unrestricted power of legislation. For his most striking innovations he also obtained the sanction of Apollo; *Arist.*, *Ath. Pol.*, ch. 21. According to the conception here set forth, Draco must have enjoyed absolute power of legislation, since there is no reason why he alone should be made an exception to the rule. It seems far safer to follow tradition in this matter. But there is no reason for believing that Draco's changes were sweeping or even important. Religion must have saved many of the old customs as it has everywhere done. Nor can deep-seated institutions of a race be uprooted by the edicts of a man, even though he be a despot.

<sup>2</sup> Pollux, IX. 61; VIII. 42; Pausanias, IX. 36. 8, says that he assigned a severe penalty for adultery, though he condoned some offenses.



the existing ideas of law, with a view to future improvement and growth, and for preparing the people for the task of self-government. Notwithstanding its severity, it tended in the end to clemency by subjecting injustice to public criticism; it deprived the Eupatrids of one of their most sacred rights and strongest safeguards, and kept the wholesome usages of the early state from degenerating into unreasonable and superstitious formalism, such as sprang up among the Hindoos from a perversion of the same primitive institutions.<sup>1</sup> On the other hand, had the Eupatrids yielded and allowed a mitigation of the laws, they might have continued in power much longer. The people were far from being quieted, as the following chapter will show.

Pollux<sup>2</sup> was of the opinion that Draco instituted the court of the *Ephetae*. Yet it is more probable that he merely systematized in definite *θεσμοί* its organization and procedure, which had been developing for centuries before him. For a long time after the confederation of the Ionic tribes, the *Boule* sat in one place, hearing and judging such cases as were presented to it for arbitration.<sup>3</sup> But when in Attica distinctions

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<sup>1</sup> Maine, *Ancient Law*, p. 11 ff.

<sup>2</sup> VIII. 125. But this seems to rest on a misunderstanding of Dem. XLIII. 57; cf. Philippi, *Areopag und Epheten*, p. 203, and Busolt, in *Müller's Hdb.*, <sup>a</sup>IV. p. 142, n. 9. Plutarch, *Solon*, 19, says that Draco in his laws speaks only of the *Ephetae*, never of the Areopagus, and this has led some to disbelieve in the existence of the Areopagus before Solon. But Plutarch, it seems, was ignorant of Draco's legislation as a whole. The only Draconian laws existing in his time were those relating to homicide, which Solon had admitted into his code. Yet even here it appears that Solon left unchanged only those laws which relate to involuntary or justifiable homicide,—those only which fell within the competence of the *Ephetae*. That Solon changed the law concerning premeditated homicide is maintained by Gilbert (*Hdb. d. griech. Staatsalter.*, I. p. 128, n. 3, with references), and Busolt (*Müller's Hdb.*, <sup>a</sup>IV. p. 143, n. 6), and seems probable for the reasons urged.

<sup>3</sup> That all murder cases were tried in primitive times before the Areopagus without regard to palliating circumstances is implied in the ancient myths concerning trials before that body. For trial of Ares and Orestes see Dem. XXIII. 66, 74; Aesch., *Eumenides*, 683 ff.; Paus. I. 28. 5. See also Paus. IV. 5. 2, for the antiquity of the Areopagus as a court with competence in murder cases. Com-

as to degree of guilt began to be more definitely conceived, a separate court was instituted for the consideration of cases affected by palliating circumstances. This court, consisting of 51 *Ephetae* (who must be above 50 years of age and must have led blameless lives), selected from the Eupatrids and probably from the Areopagites, sat in judgment upon cases of homicide in localities varying with the nature of the offense :

1. At the Palladium, in cases of accidental homicide, or devising an action which would result in accidental homicide. Here also were tried cases of killing a slave or a resident alien or a foreigner.<sup>1</sup> The convicted must retire from the country, without confiscation of property,<sup>2</sup> until he could effect a reconciliation with the kinsmen or *phrateres* of the slain, originally, no doubt, by the payment of a compensation in money. In case the kinsmen or *phrateres* refused reconciliation, it is thought that the period of exile was fixed by some law unknown to us.<sup>3</sup>

2. At the Delphinium were tried cases of justifiable homicide, the act itself being admitted but legal justification pleaded, "as when a man takes an adulterer in the act or kills another by mistake in battle, or in an athletic contest,"<sup>4</sup> or in self-defense against assault.<sup>5</sup> The convicted suffered no punishment but required purification.<sup>6</sup>

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pare this with the Spartan senate, which enjoyed like competence; Arist., Politics, III. 1 (p. 1275 b, 10); Philippi, Areopag und Epheten, p. 208. The number 51 is well established; Decree of 409/8, C. I. A. I. 61. 17; Dem. XLIII. 57. The same passages show the *Ephetae* to be of noble rank; also Poll. VIII. 125. For the other qualifications see Philippi, *op. cit.*, p. 210.

<sup>1</sup> Aristotle, Ath. Pol., ch. 57; Dem. XXIII. 71-2; Paus. I. 28. 8-9. Cf. Gilbert, *op. cit.*, I. pp. 362-3; Busolt in Müller's Hdb., <sup>2</sup>IV. p. 273; Philippi, *op. cit.*, p. 118.

<sup>2</sup> Dem. XXIII. 45; Busolt, *loc. cit.*; Philippi, *op. cit.*, p. 114.

<sup>3</sup> Philippi, *op. cit.*, pp. 115-6; Gilbert, *op. cit.*, I. pp. 362-3.

<sup>4</sup> Aristotle, Ath. Pol., ch. 57.

<sup>5</sup> Leist, Graeco-italische Rechtsgeschichte, p. 309; Gilbert, *op. cit.*, I. p. 363; Demosthenes, XXIII. 50, confirmed by C. I. A. I. 61. 33; also Dem. XXIII. 51 ff., 74; Antiph. Tetral. III; Paus. I. 28. 10; [Dem.] XLVII. 7, 40.

<sup>6</sup> Dem. XX. 158; Busolt in Müller's Hdb., <sup>2</sup>IV. p. 274; Leist, *op. cit.*, p. 340; O. Müller, Eumenides, pp. 152, 153, n. 4. The statement of Demosthenes, *loc. cit.*,

3. In the Phreatto were tried cases of intentional homicide, or wounding committed while in exile for unintentional homicide. Being unclean, the accused dared not touch the land but took his place in a boat hauled in against the shore, on which latter sat the judges. While no case of the kind is known to have occurred,<sup>1</sup> Aristotle regards it as one of the necessary courts, the feeling of guilt driving the murderer to ask purification of this character. If he is found guilty, he suffers the punishment of wilful murder; if he is acquitted, he escapes that penalty, but undergoes the exile for his former homicide.<sup>2</sup> These were all the courts in which the 51 *Ephetae* sat. A fourth court existed for the trial of animals and lifeless objects, held near the Prytaneum and composed of the king and four *phyllobasileis*.<sup>3</sup> In primitive times, this court was deemed as essential and as important as the others; yet Aristotle must have considered it useless since he has made no mention of it in his enumeration of necessary courts.<sup>4</sup> It is quite probable that *in* the Prytaneum there existed before Solon another court for the trial, under the presidency of the king, of those accused of designs against the government. In the court of the Areopagus were still tried cases of premeditated homicide, wounding with intent to kill, plotting against life, poisoning with murderous effect, and arson.<sup>5</sup> Where death was effected by any of these means, no compensation in money was allowed to

that such a person is pure (*καθαρός*) seems to mean that no criminality attaches to him on the side of the civil law, and that he has a just claim to religious purification. This is the view also of Thumser, Griech. Staatsalterthümer, p. 363 and n. 5.

<sup>1</sup> Alfred Emerson, Lectures (unpublished) on Attic Law. Aristotle, Politics, IV. 16. 3 (p. 1300b, 29f.) says that "cases of this sort rarely happen at all, even in large cities."

<sup>2</sup> Demosthenes, XXIII. 77 ff.; Aristotle, Ath. Pol., ch. 57; Pollux, VIII. 120; Gilbert, *op. cit.*, I. p. 364; Busolt, Müller's Hdb., <sup>2</sup>IV. p. 274.

<sup>3</sup> Aristotle, Ath. Pol., ch. 57; Demosthenes, XXIII. 76; Pollux, VIII. 120; Pausanias, I. 28. 11; Gilbert, *op. cit.*, I. p. 364; Busolt, Müller's Hdb., <sup>2</sup>IV. p. 274.

<sup>4</sup> Aristotle, Politics, IV. 16. 2-4 (p. 1300b).

<sup>5</sup> Aristotle, Ath. Pol., ch. 57; Dem. XXIII. 22-4; Philippi, Areopag und Epheten, p. 23 ff.; Leist, Graeco-italische Rechtsgeschichte, p. 311.

the convicted, no pardon was granted. Death and confiscation of property alone satisfied the spirit of the slain.<sup>1</sup> In case of mere wounding with murderous intent, banishment was the penalty.<sup>2</sup>

The Areopagus, while performing the judicial duties above enumerated, remained, as before, a general administrative body, superintending the entire work of government and exercising guardianship over the newly written laws. Any person could now gain access to the Areopagus and claim its protection, whosoever felt himself injured in violation of any law.<sup>3</sup> Thus were the Eupatrids driven from the stronghold of their power, *viz.*, a monopoly of the knowledge of customs, and the Plebeians given an independent standing in the courts of law. The judges were still Eupatrids, however, and the reform, though important, did not *de facto* reach the lower strata of society.

Before Draco, the archons were chosen only from those of rank and wealth. Probably the property qualification was at this time indefinite. The text states that Draco fixed it at ten *minae* (Aeginetan standard, which was equivalent to 1380 *drachmae* of the Attic-Euboic standard). Now, as rents were far higher in Draco's time than even a generation later, and as the purchasing value of money was far greater, it is safe to assume that the property requisite for filling the office of archon was about that of a *Hippeus*.<sup>4</sup> Legally non-Eupatrids were now eligible, provided they possessed the property quali-

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<sup>1</sup> Leist, *op. cit.*, p. 312 ff.

<sup>2</sup> Authorities on the Areopagus and *Ephetae*: Aristotle, *Ath. Pol.*, ch. 57; Demosthenes, XXIII; Pausanias, I. 28; Philippi, *Rhein. Mus.*, XXIX. p. 1 ff.; Schömann, *Der Attische Process*, p. 5 ff.; Gilbert, *op. cit.*, I. pp. 120 ff., 360 ff.; Müller's *Handbuch*, <sup>2</sup>IV. pp. 142-4, 273 ff.; Hammarstrand, *Attikas Verfassung zur Zeit des Königtums*, p. 816 ff.

<sup>3</sup> Aristotle, *Ath. Pol.*, ch. 4.

<sup>4</sup> The landed property of the Zeugite in the time of Solon was worth, at least, 2,000 drachmas; Plut., *Solon*, 23; Headlam, *Class. Rev.*, V. p. 167; Wyse, *id.* p. 224. This fact has been used to prove the number 10 to be an error of author or copyist, or even to show that the whole passage is an interpolation. Perhaps the amount should be stated at 100 *minae* instead of 10; but cf. Busolt, *Müller's Hdb.*, <sup>2</sup>IV. pp. 139-40 and n. 1. For the generals under Draco, Busolt, *loc. cit.*, and Thumser, *Die griech. Staatsalterthümer*, p. 351 ff.

fication. But we may be pretty certain that they did not in practice gain access to the archonship till after Damasias. In two things only did the Draconian constitution affect this office from the time of its adoption: (1) in making the property qualification definite, (2) in shifting the elective power from the Areopagus to the Ecclesia. His change in the constitution did not consist, as has been said, in widening directly the range of citizenship, for the hoplites had always been citizens; but the change was far less palpable, and therefore escaped the notice of the ancient historian. Draco's task was to recall the Ecclesia into life and to restore to it the sovereignty long wielded by the Areopagus. It is in view of this fact that we name his constitution a timocracy. The property qualification of general and hipparch was one hundred *minae*, and these were required to have reached the prime of life.<sup>1</sup> In ancient times, the organization of the army was based almost universally on the tribes, and the Athenian military system was, as we have seen, no exception to the rule. Tribe leaders of the host must have existed from Homer, down. These were originally the *Phylobasileis*; but when they had been restricted to the performance of sacerdotal functions, the ground was cleared for the institution of a new magistracy,—that of *Strategus*, which now appears to have existed as early as the time of Draco. If this is true, the number of *Strategi* must have been four, as also the number of hipparchs. They must also have been subordinate to the Polemarch, as were the ten generals from the time of their institution down to the battle of Marathon. Magistrates even at this early date seem to have been subject to the *euthyna* at the expiration of their term of office. This may, indeed, have originated with the institution

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<sup>1</sup> The peculiar form which the statement of the latter requisite assumes is distinctly antique, and tells strongly, therefore, against the theory of interpolation; cf. Deinarch. *Contr. Dem.* § 71. The high property qualification of the generals seems to indicate that they were chosen from the wealthiest citizens to act as a check upon the Polemarch,—a measure deemed necessary after the attempt of Cylon to seize the government.

of the ten-year magistracies, since the great objection to life-tenure was the irresponsibility of the magistrate. The terms 'ἰπεύθυνος' (responsible) and 'εὔθυνα' (examination of accounts) give us the Greek idea of responsibility.

Before Draco there had been a court of three hundred nobles, which sat in judgment upon certain persons who had incurred the charge of impiety in the suppression of the Cylonian tumult. No evidence exists that this was a special court instituted for the occasion. Since the Areopagus could not always represent adequately the transient feelings of the whole Eupatrid body, it was natural that the nobles should devise some other mode of making themselves felt whenever occasion demanded. Again, in early Greece, we nowhere find deliberative and judicial functions specialized. Accordingly, it is not impossible that the court of three hundred nobles possessed something of the nature of a *Boule*, that it represented the Eupatrids more directly than the Areopagus, that it met in cases of special emergency, and contained within it the germ of the Draconian Senate.<sup>1</sup> Under Draco the *Boule* was composed of four hundred and one members, and seems to have exercised probouleutic functions, as did the *Boule* of the time of Homer and of Pericles. The filling of this and other offices by lot is here no sign of democracy. It merely determined the order in which the qualified were to serve, and assured to all the qualified an opportunity to engage in governmental service. The existence of the *Pentacosiomedimni*, *Hippeis*, and *Zeugitae* at this time is indicated by the specification as to the fines of absent senators. Three of the terms found in the so-called Solonian property classification, *viz.*, *Hippeis*, *Zeugitae*, and *Thetes*, undoubtedly existed from the earliest times, and came into being as the names of purely organic groups. *Penta-*

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<sup>1</sup> The evidence for this is, indeed, slight. I offer it, therefore, as a possible solution of an exceedingly difficult question, and not as well authenticated history. If true, it is a remarkable illustration of the principle that institutions are not made but grow. See Plut., Solon, 12; Herod., V. 72; Abbott's History of Greece, I. p. 306; cf. Thumser, Die griech. Staatsalterthümer, p. 348.

*cosiomedimnus* alone wears an aspect of artificiality, and was probably invented by some legislator before Solon, to designate an arbitrarily created rank or class. If we are to rely upon the fourth chapter of Aristotle's Athenian *Politeia*, Draco did not employ this classification as a basis for the distribution of political honors. Accordingly, we may regard it as serving only financial purposes at this time. The three lower classes may not yet have assumed those definite limits which we find them possessing from the time of Solon onward.

The Areopagus suffered, according to the letter of the Draconian legislation, no diminution of power. It was still guardian of the laws and supervised the magistrates in the discharge of their official duties. The Ecclesia, composed of those able to furnish full armor, began from this time to exercise more and more the sovereignty. In it the elections were held, and possibly matters of greater importance were discussed and decided. Yet it had, before Cleisthenes, no legislative power, this function belonging only to the *Thesmothetae*, and to individuals, as Draco and Solon, selected expressly for the purpose. Moreover, it was subject to the control of the Areopagus, since the latter body could inhibit any measure which met its disapproval. The great point gained in the revival of the Ecclesia was for the time being of little apparent significance. Potentially, it was the shifting of the *κράτος* from the Areopagus to the Ecclesia, from Eupatridism to property of a specified amount. No measures, however, were taken for the relief of the economic distress.

This was the third stage in the development of the Athenian constitution.<sup>1</sup> A political organ had been conceded to the heavy-armed in the revived Ecclesia, the basis of political privilege shifting thus from Eupatridism to wealth. Within this widened governing circle, every care was taken to provide for a perfect political equality with respect to rank, while superior property qualifications were essential to the filling of higher magistracies.

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<sup>1</sup> Aristotle, *Ath. Pol.*, ch. 41.

This latter restriction was no innovation, since formerly only men of wealth were eligible to the archonship.<sup>1</sup> The chief provisions for obliterating distinctions of rank in the filling of senatorships and inferior offices, were the introduction of the lot and the arrangement by which none could be re-appointed to office till all the rest of the qualified had served their turn. Thus the Eupatrids were prevented from monopolizing the government, while pretending to give rights to the inferiors. The object of the new constitution is apparent. It was in itself no makeshift to avoid a difficulty for the moment, but was, so far as it went, a wise, substantial modification of the old gentile system, and formed henceforth the basis of the Athenian constitution. But it was far from striking at the main root of the evil. There had been two branches of the opposition party, the very poor, with the Diacrians as a nucleus, forming the extreme wing and demanding economic remedies; and those of moderate property, clustering about the Paralian capitalists, occupying an intermediate position between the blooded nobility and the *Thetes*, and demanding the *politeia*. The Eupatrids chose to favor the moderates by restoring the Ecclesia.<sup>2</sup> Their measures failed to give relief, not because they refused to admit the *Thetes* to citizenship; but rather because no attempt was

<sup>1</sup> A timocracy, in a certain sense, existed before Draco. Accordingly, he did not introduce the timocracy; Thumser, *Zeitschrift für die österreichischen Gymnasien*, 1891, pp. 978-9.

<sup>2</sup> That the Homeric agora was composed of all liable to military service has been shown above, p. 121. In like manner the Roman Comitia Curiata of the kingly period contained Plebeians and Clients as well as Patricians; Schiller, in Müller's Hdb., IV. p. 628, with references in n. 1. That the Athenian assembly had suffered no change in its composition before the Cylonian insurrection appears from Thuc. I. 126: "The Athenians perceiving it, came in a body (*πανδημεν*) from the fields." It would be straining the situation to the utmost to make this refer only to the Eupatrids, as Gilbert does, Hdb. d. griech. Staatsalter., I. p. 123, n. 2. After a time the most of the besiegers grew weary of the siege and departed, having commissioned the archons with power to manage the affair as they saw fit. The commissioning must have taken place through an Ecclesia. This is, so far as I know, the only reference to an assembly at Athens before Draco, and certainly in this assembly the non-Eupatrids took part; see also Schneider, in *Wochenschr. für kl. Phil.*, 1891, p. 499.



made to remove the economic distress. The old nobility sacrificed its exclusive privileges of blood only that it might with greater safety continue to oppress the multitude. Even the right to bring complaints for injury before the Areopagus, — a right now open to all, could not have availed the client against his master. To the Thete, therefore, the Draconian measures meant, for the time being, simply this, that one of his oppressors had taken the other into partnership.<sup>1</sup>

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<sup>1</sup> The authorities on Draco which I have examined are: Aristotle, *Ath. Pol.*, especially ch. 4; *Politics*, II. 12. 13 (p. 1274b); Plutarch, *Solon*, 17; Grote, *History of Greece*, ch. X.; Busolt, in *Müller's Hdb.*, <sup>2</sup>IV. pp. 135-144; Gilbert, *op. cit.*, I. 123 ff.; Cox, *Greek Statesmen*, I. 11 ff.; *Encyclopedia Britannica*, *sub voce*; Thumser, *Die griech. Staatsalterthümer*, pp. 342 ff., 365 ff.; Busolt, *Griech. Geschichte*, I. pp. 510-2; F. Cauer, *Aristoteles als Historiker*, in *Deutsche Zeitschrift für Geschichtswissenschaft*, 1892, VIII. p. 3 ff.

## CHAPTER IX.

### THE SOLONIAN REVOLUTION.

A new nobility of wealth had taken the place of the old nobility of blood ; and though the Eupatrids still enjoyed the exclusive privileges of *hierosyne*, — religious rites and offices, — in other respects the two branches of the nobility were on a level. But the servitude of the masses continued, until finally the populace arose against its oppressors. After the sedition had lasted long and had assumed a formidable aspect, the two parties came to terms, appointing Solon to the archonship for the purpose of reconciling the contestants and restoring order.<sup>1</sup> Although of moderate property and holding, therefore, a middle station in the timocratic scheme of government and society, Solon was an Eupatrid of the highest rank, being descended, it is said, from Codrus, the ancient king.<sup>2</sup> He had a reputation also for military ability and statesmanship which placed him above all his contemporaries ; while his moderation made him the very man to reconcile conflicting parties. Moreover, he was an elegiac poet of high order, and employed his talent in the dissemination of sound political and moral doctrine. As prose literature had not yet come into being, Solon adopted the only means at hand, and cast his political pamphlets in the form of elegy. Some fragments of his poetry show us the stirring energy of the man, yet it is in general the plain expression of sober-minded truth. One of these pamphlets revealing his grief at the sight of the “most venerable land of Ionia”<sup>3</sup> involved in such misery and sickness, called the attention of the public to his patriotic spirit and moderation, and was the immediate cause of the nation’s choice. He battled, says

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<sup>1</sup> Arist. Ath. Pol., ch. 5.

<sup>2</sup> Plutarch, Solon, 1.

<sup>3</sup> Cf. Sandys, Arist. Const. of Athens, p. 19, n. on *Ἰαονίας*.

Aristotle, as the champion of each party against the other, then pleaded with both in common to put a stop to the existing discord. It is easy to see from his poems on which side his sympathies lay. The whole blame of this sedition rested, in his opinion, upon the wealthy.<sup>1</sup> Their avarice and arrogance stood in the way of his country's prosperity.<sup>2</sup>

His reforms may be classed under three categories : (1) Measures of relief for the multitude. (2) Re-organization of the state. (3) Laws of various kinds. His relief measures were as follows :

1. He abolished all debts both private and public. This alone is the *Seisachtheia*, or "shaking off of burdens."<sup>3</sup> The term has been improperly applied to the entire group of relief measures. We learn now also that the measure extended to debts of every description, not being confined to those contracted on security of person or property. The occasion offered no opportunity for discriminations as to the nature of the debt or the manner in which it was contracted ; but called rather for heroic treatment in the sacrifice of individual interests for the safety of the whole. A special application of the *Seisachtheia* was the annulment of mortgages on lands and the removal of mortgage pillars.<sup>4</sup> This affected only the class of free-holders and had nothing to do with the clients. Another application of the *Seisachtheia* was the abolition of debts contracted on security of person. This in the main affected the clients, as appears from the second chapter of

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<sup>1</sup> Neither Solon nor Plutarch says anything about a political distinction between Eupatrids and Plebeians, this distinction having been removed before Solon.

<sup>2</sup> The influence of family tradition was all powerful in ancient times. Thus at Rome, Julius Caesar inherited his popular tendencies from his ancestors. So, did not the Codrids, who loved the *Demus*, bequeath to their illustrious representative some share of their political sentiments? It is not, however, as the adherent of family or party, but of pure statesmanlike principle that he stands forth as the greatest, wisest, and most unselfish reformer of society and government known to all antiquity.

<sup>3</sup> Aristotle, *Ath. Pol.*, ch. 6 ; Plutarch, Solon, 15.

<sup>4</sup> Solon in Bergk, *Anthol. Lyr. Frag.*, 32 (25). 1-5.

Aristotle's Athenian *Politeia*. Yet some free-holders may have lost personal liberty in addition to property, and may thus have come also to require emancipation.

Another important result was achieved through a natural extension of the principle contained in the *Seisachtheia*,—whether directly through this measure or requiring a separate law. It was too closely connected with the abolition of debts to be mentioned as an altogether independent measure. This was the emancipation of all persons serving for debt in Attica.<sup>1</sup> Many had also been sold in a foreign land;<sup>2</sup> and it has usually been supposed that money was in some way provided for ransoming these. Aristotle says nothing of such provision and, indeed, it has no basis of support other than mere conjecture. It would be difficult to raise the necessary funds at a time when public debts were abolished. Nor can we suppose that Eupatrid and capitalist would, under the circumstances, have consented to so generous a measure, having already lost privilege and property beyond their endurance. Again, it would be difficult for the government to search out all those who were scattered over the face of the earth and lost in the obscurity of servitude. It is better to interpret ἀνίγαγον<sup>3</sup> as “opened the way to return.” He restored the poor of Attica to their freedom and property, and thus made it possible for them to ransom their relatives. He permitted, also, the return of such as could escape from their masters. The other class of persons, mentioned in the same poem, composed of those who had fled from Attica, might now return with impunity. This would be, of course, a direct consequence of the *Seisachtheia*, requiring no further legislation. Although the *Seisachtheia* applied only to the abolition of debts, we see that it was far reaching in its results. Aristotle speaks of it in the briefest terms; but ascribes to it properly a great importance, since without this measure nothing else could be done. “He

<sup>1</sup> Solon in Bergk, Anthol. Lyr. Frag. 36. 11 ff.

<sup>2</sup> Id. l. 6-10.

<sup>3</sup> Id. l. 7.

*freed the Demus for the present.*" This describes exactly the abolition of debts and could have no other application. It was intended only as a temporary measure and required a supplementary law, if any permanent good was to be effected.

2. He forbade lending money on security of person, thus *freeing the Demus for the future.* This is the most important of all the measures of Solon and gives him the foremost place among the statesmen of antiquity. The Athenians could hardly have endured the centuries of bitter feeling, of civil strife and war, to which the Romans were subjected through the operation of the law of debt and the institution of clientage. This law saved the state from such peril. Two other measures will be mentioned under this head, although they may have required further legislation for their existence. The first of these, possibly nothing more than an especial provision of the main law, forbade to imprison or extort work in any way from the debtor; and the second, a more independent law, forbade to sell a son or a daughter or sister except when the latter were detected in unchastity. The selling of children was a natural consequence of clientage and the primitive law of debt. This law was, accordingly, one of the subordinate measures by which he freed the *Demus*.<sup>1</sup>

The *Seisachtheia* and prohibition of lending on security of person reached the very heart of Athenian society, abolishing clientage, weakening thereby the Aryan gentile system, and preparing the way for government on a wider basis.

3. His third measure of relief is that which is known as the Amnesty-decree, the words of which were as follows: "Let those who were affected with atimy before Solon's archonship, be restored to honor, except such as having been condemned in the Areopagus, or by the *Ephetae*, or by the kings in the Prytaneum, for murder or robbery, or

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<sup>1</sup> Our chief sources of information for the relief measures of Solon are Aristotle's *Politeia* of the Athenians, especially ch. 6, Plutarch's Solon, and Solon's own poems, many of which are quoted by Aristotle.

attempting to usurp the government, had fled from the country before this law was passed."<sup>1</sup> Solon recognized the harshness of the previous rulings of the courts, and passed this decree as a preliminary step to the repeal of the Draconian code, and to a more just and humane legislation. While this measure affected a limited group of individuals, it is of no small value as an index to the nature of Solon's work in the amelioration and improvement of government and society.

Next after the *Seisachtheia*, according to Plutarch, came the repeal of all the laws of Draco, except those concerning homicide, because they were too severe and the punishments too great. Along with this came the Amnesty-decree, quoted above. From the laws of homicide he refrained his hand, because of their religious associations, as well as from a consciousness of their justice. I do not understand that the repeal of Draco's laws extended to his constitution. Some parts of this fell into disuse; but the main parts were continued with more or less modification.<sup>2</sup>

Solon allowed the four Ionic tribes, with their tribe-kings to remain as before.<sup>3</sup> Undoubtedly the tribes continued to be the basis of organization of army and Ecclesia. The Solonian *Dicasteria* must have been organized in like manner. The *Thetes*, lately admitted to the citizenship, as well as those *Agroeci* and *Demiurgi* who before Solon enjoyed citizenship and performed military service, must have been attached in some way to the four tribes. The truth seems to be that non-citizens were attached as clients to the Eupatrid gentes, and shared to some extent in the gentile worship. When, however, such non-citizens were given the *politeia*, they organized themselves into religious societies, which from the term *orgeones* applied to its members we may name "orgeonic colleges." These possessed a certain independence of worship, and were assigned to the existing phratries. Like the Eupatrid gentes,

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<sup>1</sup> Plutarch, Solon, 19.

<sup>2</sup> Aristotle, Politics, II. 12. 3 ff. (p. 1274).

<sup>3</sup> Aristotle, Ath. Pol., ch. 8.

they worshiped Zeus *Herceius* and Apollo *Patrôus*.<sup>1</sup> They seem to have been patterned after the noble gentes, and might be spoken of as fictitious or non-genealogic clans. The *orgeones* could, under the ancient gentile constitution, fill no priesthood or important office in the state. They were made eligible to the archonship by Draco and Solon. The orgeonic colleges must have been regarded by the ancient historians either as plebeian gentes or as parts of the noble gentes; for it is stated that the *Eupatridae*, *Georgi* (*Agroeci*), and *Demiurgi* all belonged to the four tribes and their 12 phratries and 360 gentes down to the time of Cleisthenes.<sup>2</sup> Some of these associations may have come into existence before Solon; others, containing the *Thetes*, may have been organized in his time. There can be no doubt as to the place assigned to these in the gentile system. In later time the *orgeones* are known to have belonged to the phratry.<sup>3</sup> Accordingly they must at this time have been assigned to that body. The state was now divided into four tribes as formerly; and each tribe into three phratries. But each phratry was henceforth composed not only of gentes, but of gentes and orgeonic associations. These two smallest units were on a perfect level *de jure* with respect to political privileges; but the gentes exercised a preponderating influence in the state through their superior position in religious matters and their knowledge of the machinery of government.

<sup>1</sup> Philippi, Att. Bürg., pp. 205-7.

<sup>2</sup> Fragment 3 of Aristotle's Ath. Pol.; p. 88 of Kaibel and Wilamowitz-Möllendorff's 2d. ed. This subject is exceedingly obscure.

<sup>3</sup> Philippi, Att. Bürg., pp. 205-7. Throughout this discussion the word *orgeones* is used in its special signification. In a more general sense it designated worshippers of any sort, and might thus be applied also to the clansmen of pure descent. That Solon had something to do with the organization of the orgeonic associations appears from Photius, *ὀργεῶνες* 2. Art.=Suid., quoted by Gilbert, Hdb. d. griech. Staatsalter., I. p. 132, n. 1. Thumser, Griech. Staatsalterthümer, p. 320, thinks, that the term *ὀργεῶνες* in this connection has something to do with the Eleusinian worship. His view is not well supported. According to Busolt, Müller's Hdb., <sup>2</sup> IV. p. 207, the orgeonic associations were called *θλαστοί*; but these were probably of later formation, and appear to have been small groups within the phratry; Thumser, *op. cit.*, p. 321 f.

The weakening of the gentile ties was promoted by certain modifications of the old Aryan customs relating to inheritance and satisfaction for injury. During the period of village life, landed property, as has been said,<sup>1</sup> belonged to the gens as a whole, and could not be alienated. This seems to have been the condition of things even in the time of Homer. Later on, it became possible in Attica to alienate land by sale, but not, before Solon, by bequest. At the death of the individual, his property, in failure of children, went to his near kin in the order of their propinquity; failing these, to the *gennetae*. Solon enacted a law permitting the individual, in failure of children, to bequeath his estate to whomsoever he wished. If daughters existed, these must go in marriage to those receiving the property. As Solon had freed the individual from the control of the gens, so now he freed property from its control. Not till now did the *κρήματα* of the individual become his *κτήματα*, i. e., he entered into absolute possession of his estate.<sup>2</sup> If a man without children died intestate, the property still went to the *anchisteis*, or near kin, but the *gennetae* as such could no longer offer a claim. Yet while the individual was thus emancipated *de jure* from gens and kin, the feeling still continued that the property belonged by moral right to the *anchisteis*; and he, indeed, was a bold and stubborn man who, even in the time of Demosthenes, dared to maintain his individual right in violation of this primitive Aryan sentiment. But so far as the gens was concerned, this feeling had probably long been dead, and we never hear of *gennetae* putting forth even a moral claim to property. The law did its work effectually, therefore, in depriving the gens of this once important power.

Another law took from the *anchisteis* and *gennetae* the sole right of prosecution for the injury of a kinsman. Plutarch<sup>3</sup> says: "Desirous yet further to strengthen the common people, he empowered any man whatever to enter an action for one

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<sup>1</sup> p. 59 f.

<sup>2</sup> Plut., Solon, 21; Demosthenes, XX. 102.

<sup>3</sup> Solon, 18.



that was injured. If a person was assaulted or suffered damage or violence, another that was able and willing to do it, might prosecute the offender." Aristotle<sup>1</sup> says: "He permitted any one, who wished, to go to law in defense of injured parties," and regards this as one of the three most important measures of Solon. Its object was to place fellow-feeling and beneficent action upon a wider basis than that of kin, to give the state control over those cases which most nearly concerned it, — but which, up to this time, had been managed by the gentes in accordance with their religious usages, — thus bringing about a dependence of the individual upon the government rather than upon the gens.

Most nearly connected with the gentile organization of the state, was the territorial subdivision of Attica into *trittyes* and *naucrariae*, already shown to have existed before Solon. The original functions of the naucrars continued without change till the erection of demes by Cleisthenes. They collected the taxes, now levied according to the property scale, and disbursed them as ordered by the higher authorities.

Having considered the Aryan gentile system of state organization as widened by Draco and Solon, — though still preserved in its main features, — together with the territorial subdivisions of the tribes developed from that system, we come now to the timocratic classification of the citizens.<sup>2</sup> Plutarch mentions this as the first of his political measures. The abolition of debts must have brought great confusion into the existing classification. Many whose estates had been loaded with mortgages now possessed unincumbered farms. Others who had loaned money extensively on security of person or property had probably been compelled to sell much of their land. A redistribution of the citizens in the property classes was

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<sup>1</sup> Ath. Pol., ch. 9.

<sup>2</sup> Aristotle, Ath. Pol., ch. 7; Plut., Solon, 18. It is unnecessary to suppose, as Kenyon does, that Solon abolished the Draconian timocratic classes. Plutarch regards Solon merely as taking a new census. Kenyon's explanation is too ingenious; cf. Sandys, Arist. Const. of Athens, p. 25, n. on *τιμήματα*.

therefore an imperative necessity. Accordingly, "Solon being willing," as Plutarch tells us, "to continue the magistracies in the hands of the rich men and yet receive the people into the other part of the government, made a (new) census of the citizens' estates." We learn here (1) that two classes of people only were considered, *viz.*, the rich and the poor, no reference being made to Eupatrids and non-Eupatrids; (2) that the rich alone had enjoyed office before Solon; (3) that none were admitted to office by Solon who before were ineligible, unless perchance a Thete might become a Zeugite by the show of a sufficient landed estate. Thus the testimony of Plutarch confirms the statement of Aristotle in the *'Αθηναίων Πολιτεία*, that the distinction between Eupatrid and well-to-do non-Eupatrid had vanished and the timocracy had been introduced before Solon. As a result of this census, all citizens, including those lately admitted, were divided into four classes according to annual income derived from their own estates. The first class, called *Pentacosiomedimni*, was composed of those who enjoyed an annual income from their own estates of at least 500 μέτρα (measures), wet and dry. The second class, *Hippeis*, included all with an income ranging from 300 to 500 μέτρα, wet and dry. This class probably received its name from the fact that its members served in the cavalry, *equo privato*,<sup>1</sup> though, from the time of Solon, the division was made with reference to income, just as was the case with the *Pentacosiomedimni*.<sup>2</sup> The third class, comprising the *Zeugitae*, contained those who received an

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<sup>1</sup> Schol. on Arist., *Equites*, 627; Pollux, VIII. 130. This class must have existed before Solon and before Draco. Solon merely fixed its limits definitely.

<sup>2</sup> Aristotle does not take these two facts in their historical relation, and wrongly supposes, therefore, a discrepancy between his own view and that of certain other historians; cf. Sandys, *Arist. Const. of Athens*, p. 27, notes on *ἑπτάκδοκα*, *et seq.* In Aristotle's time, the *Hippeis* no longer performed the function of serving in the cavalry, and it could only be inferred that this was their original duty from the name itself, and from the fact that the statue of a horse stood on the Acropolis, dedicated by a certain Anthemion, on exchanging his Thetic for the Hippic class; cf. Keil, *Verfassungsgeschichte Athens*, p. 66 ff; Sandys, *loc. cit.*, and p. 28, n. on *Διφίλου*.

income of from 200<sup>1</sup> to 300 *μέτρα* per annum. This class was evidently made up of those who cultivated with their own yoke of oxen, as distinguished from the *Hectemori*, who used the oxen of their lords. It may have contained Eupatrids of moderate property, but received its character and name probably from the greater number of Plebeians (once clients of the better order) who for the most part composed it. The *Thetes*, who formed the fourth class, received in like manner from their estates an income of less than 200 *μέτρα*. If any were mere tenants and possessed no property from which to receive an income, they of course were still classed among the *Thetes*.<sup>2</sup>

It seems to be a well established fact that this classification was based upon landed property alone. Under Draco the qualification for office was a certain estate free from encumbrance; under Solon it was a certain number of measures, wet and dry, of produce derived from one's own estate.<sup>3</sup> Reference is doubtless made in both instances to land and its produce.<sup>4</sup> We are told also that the best form of government is that based upon agriculture. For those engaged in this occupation are healthy in body and soul; they are attached, moreover, through their land, to the state, and are ready to sacrifice themselves for its peace and safety; their property being small, they

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<sup>1</sup> The number 200, as the lower property limit of the Zeugite class, is now confirmed by the authority of Aristotle. Böckh, *Staatshaushaltung d. Athener*, <sup>3</sup>I. p. 581, relying upon Pseud. Dem. XLIII. 54, assumed 150 *drachmae* as the lower limit of income.

<sup>2</sup> There can be no doubt that the *Zeugitae* and *Thetes* existed from the earliest times, and that Solon did nothing more than to give them definite limits as to property. Again, the term *Pentacosimedimnus*, when first invented, applied to a man whose income was 500 *medimni* (dry measure alone). This could have been only under a government far more oligarchic than that which Solon favored, since Solon greatly lowered the property qualification of this highest class in allowing account to be taken of property in both wet and dry measures.

<sup>3</sup> Arist., *Ath. Pol.*, chs. 4 and 7.

<sup>4</sup> Bekker, *Anecd. I.* p. 298. 20, πεντακοσιμέδιμοι = οἱ ἐκ τῆς οἰκίας γῆς ποιῶντες, κ.τ.λ.

have no leisure to interfere in all the little details of government.<sup>1</sup> This is the government by the heavy-armed and is midway between the absolute oligarchy, depending upon the knights, and the democracy, based upon the sailors and light-armed.<sup>2</sup> It is, accordingly, the best possible form of government by the people. Those whose wealth consisted of hoarded money or merchandise were ranked with the *Thetes* and had, therefore, little part in the government. They were encouraged by the provisions of the constitution to invest in land and thus to identify their interests permanently with those of the state, while the wise restriction as to the size of estates prevented the wealthy few from monopolizing the privileges of government through the excessive acquisition of landed property. This distinction between real estate and movable property was preserved till after the battle of Plataea.

The object of the classification was, on the one hand, taxation and military service; and on the other, the distribution of offices. Only members of the three upper classes were eligible to office, while within these classes all distinctions of rank were *de jure* obliterated. The offices of archon, treasurer, *Poletae* (who farmed out the taxes, sold confiscated property, etc.), the Eleven (executioners), the *Colacretae* (treasurers apparently of the Naucratic Fund) were open to the three wealthier classes not indiscriminately, but with eligibility fixed according to importance of office and amount of income. The archons were probably chosen from the *Pentacosiomedimni*,<sup>3</sup> afterwards

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<sup>1</sup> Aristotle, *Politics*, VI. 4. 1 (p. 1318 b, 9 ff.); Curtius, *History of Greece*, I. pp. 354-5; Gilbert, *Hdb. d. griech. Staatsalter.*, I. pp. 132-3.

<sup>2</sup> Aristotle, *Politics*, VI. 7. 1 (p. 1321 a, 1 ff.).

<sup>3</sup> Aristotle does not speak in more definite terms, and our only authority for the statement that the *Pentacosiomedimni* alone were eligible to the archonship, is Demetrius of Phalerum, — quoted in Plutarch's *Aristeides*, — an untrustworthy author, indeed, notwithstanding Schömann's great respect for him. It is probable, however, that he has stumbled upon the truth and that the archonship was restricted to the *Pentacosiomedimni*, though there is nothing in the *Politeia* against supposing that the *Hippeis* were also eligible; cf. Landwehr, *Philol.*, Suppl. V. p. 118 ff.

from the *Hippeis*, while the *Zeugitae* were not admitted till 457.<sup>1</sup> The treasurers belonged to the highest property class, just as in later times. Nothing is said of the *Strategi* and Hipparchs, under the Solonian constitution; but if these existed, they must in like manner have required the highest qualification of property. Grote<sup>2</sup> held the view that *Pentacosiomedimni* alone were eligible to all commands, and this is probably correct. The *Hippeis*, as has been said, constituted the cavalry, while the *Zeugitae* made up the body of hoplites. These three classes were alone subject to direct taxes (*εἰσφοραί*) and to the performance of liturgies, or unpaid services to the state. The *Thetes* served only as light-armed or with panoply furnished by the state. They held no offices and were not subject to direct taxation.<sup>3</sup> They were allowed, however, to sit with the other classes in the Ecclesia for the election of magistrates and the management of such other business as now came before that body. They were admitted also to the courts (*Dicasteria*) which exercised the *euthyna* of magistrates and entertained appeals from judicial authorities.<sup>4</sup> The rights of electing and judging magistrates composed the *κράτος* which Solon himself says in his poems that he bestowed upon the *Demos*. It was just that amount of power which the people needed for the preservation of life, liberty, and happiness. "Without these," says Aristotle, "the people must have been slaves and enemies of the rest."

We are now enabled to trace the history of the manner of election to the archonship with minute accuracy from the earliest times to Aristotle's own day. Before Draco, as has been noticed, the archonship was filled through appointment by the Areopagus; from Draco to Solon election to that office

<sup>1</sup> Sandys, *Arist. Const. of Athens*, p. 29, n. on *διδὲ καὶ πῦρ*; *Arist., Ath. Pol.*, ch. 26.

<sup>2</sup> Ch. XI., (small edition) I. p. 590.

<sup>3</sup> *Arist., Ath. Pol.*, ch. 7; Sandys, *op. cit.*, p. 29, *Testimonia*; Busolt in Müller's *Hdb.*, <sup>2</sup> IV. p. 148.

<sup>4</sup> *Plut., Solon*, 18; *Arist., Politics*, III. 11. 8 (p. 1281 B).

was exercised by the Ecclesia. Under Solon, a new system was introduced. Each tribe chose by vote ten candidates from its qualified members, and from these forty men the nine archons were chosen by lot.<sup>1</sup> This combined process of selection and sortition was not without meaning. Through the free election of candidates, the power of the *Thetes* came into play, and men could be selected favorable to their interests. Although they had been given a share in the election of magistrates, if these were now to be taken by lot, the *Thetes* would have had no representation in the government. The reasoning of Grote defended in a masterly treatise by Lugebil<sup>2</sup> against Schömann is now demonstrated beyond a doubt. According to this reasoning, (1) all offices of the first importance were at Athens filled by election; (2) the archonship was from the beginning to a time succeeding the Persian wars an office of the highest importance, but thereafter declined with the gradual rise of democracy, therefore (3) the lot was introduced for the filling of this office sometime after the Persian wars, and its introduction signals an advanced stage in the evolution of democratic institutions.<sup>3</sup> Apart from the benefit accruing to the *Thetes* by the element of election in the filling of magistracies, the whole nation was thereby enabled to call to its service the ablest and most honorable men of the country. The principle of sortition, on the other hand, was introduced to prevent jealousy and intrigue. Most important of all, sortition, if adhered to, would have rendered it impossible for two great rivals to contend for the archonship (eponymous), and involve their country in danger through the bitterness of their strife. But I believe that this part of the process was often set aside in the turmoil of the years between

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<sup>1</sup> Arist., Ath. Pol., ch. 8.

<sup>2</sup> Zur Geschichte der Staatsverfassung von Athen, p. 564 ff.

<sup>3</sup> Much praise is due to Grote for his statesmanlike views of Grecian history; but the greatest tribute to his memory will be paid by the acknowledgment that the discovery of Aristotle's treatise has enhanced his value as an historian of the Athenian democracy.

Solon and Peisistratus. The functions of the archons underwent through Solon's legislation no material change. But their judicial powers were now limited by the right of appeal to a popular court. It was not sufficient merely to give the *Demus* its freedom,—some means must be discovered of securing it against the unjust rulings of the courts. The needful safeguard was found in the right of appeal. Justly then may we regard this as a wise and salutary measure, as it checked malversation on the bench and led the people gradually, through the courts, to the supervision and management of the government.

The *Boule*<sup>1</sup> was now composed of 400,—100 from each *Phyle*. Its functions are not stated; but it probably arranged beforehand the business of the *Ecclesia*, as in later times. Whether it had any administrative duties before Cleisthenes is unknown. The manner of choosing senators has not been given for this period; but they were probably taken by lot from members of the three upper classes who were above thirty years of age, as under the Draconian constitution.<sup>2</sup>

The *Ecclesia* was composed of all the citizens, including *Thetes*, and met probably for the election of magistrates. We know not what other business it managed, but at this time it could have exercised no important powers. Its deliberations were undoubtedly controlled by the *Areopagus*, which checked democratic tendencies in the popular assembly by its power of inhibiting measures brought before that body. Solon did not intend to entrust the work of legislation to the people, as is evident from the fact that he made his laws binding for a hundred years. With the *Areopagus* as an all-controlling body, and with a set of magistrates enjoying large competence in the military, financial, and judicial departments of government, little room was left for the activity of a popular assembly. Its real power in the state did not begin before Cleisthenes.

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<sup>1</sup> Arist., *Ath. Pol.*, ch. 8.

<sup>2</sup> It is to be observed that the three upper property classes of Solon corresponded, for all practical purposes, with the class of "men capable of bearing arms" in the Draconian scheme.

Little is said of the *Dicasteria*<sup>1</sup> under Solon, but enough to show their relation to the general plan of government. Neither the number nor qualification of dicasts is given; but this is certain, that members of all classes, including the *Thetes*, were eligible. Probably an age of thirty years or over was required. While the *Thetes* were theoretically eligible, they were practically excluded by the absence of pay. None but well-to-do citizens could have devoted their time to court business, nor can we think that even these would have consented to meet often or in great numbers. Since the business consisted, so far as we know, only in hearing and deciding appeals from the judgment of magistrates, no great number of sessions per annum was required. In a word, the *Dicasteria* were practically controlled by the more wealthy class of citizens, and met at comparatively rare intervals for the purpose of checking magistrates in the performance of their judicial duties. It is interesting to observe the insight of Aristotle into the true spirit of the Athenian policy. It was through the law-courts that the *Demus* became master of the government. The growth of its power was hastened by the fact that the laws had not been composed with simplicity and perspicuity, but many doubts and disputations arose as to their meaning, in the settlement of which the courts were called to the arbitration of all matters both public and private. Some were even of the opinion that Solon made the laws obscure on purpose, that so the *Demus* might become master of the decision. This is, of course, an absurd supposition, and the true reason for their obscurity is given by Aristotle in correction of the false view. An idea which is altogether wrong may be of great value. So, this false notion calls attention to the law-courts as both the instrument by which the Athenian democracy was built up and the foundation

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<sup>1</sup> Arist., *Ath. Pol.*, ch. 9. Busolt, *Müller's Hdb.*, <sup>2</sup>IV. p. 152, regards it as almost certain that there was at first but one popular court and that this was called the *Heliaea*; cf. Sandys, *Arist. Const. of Athens*, pp. 34-5, notes.



of the people's sovereignty. At this epoch, however, their influence upon the government was barely felt.

The power of the Areopagus was by no means diminished. Although certain strong democratic tendencies are observable in the constitution, this aristocratic body was even strengthened in its hold upon the government. As guardian of the laws, it exercised an unlimited supervision over government and people in all matters, including the superintendence of magistrates,<sup>1</sup> and a protecting care and censorship over the lives and conduct of the citizens.<sup>2</sup> It could chastise offenders, having power to punish and fine; and in handing over to the treasury the moneys accruing from fines, it was under no obligation to state the ground on which it had inflicted the penalty. Solon added the power to try those who conspired for the overthrow of the *Demus*.<sup>3</sup> The Areopagus was now at its height. Recruited from ex-archons, who had been chosen to office for their wisdom and integrity, and whose interests through their superior wealth were closely intertwined with the peace and prosperity of the country, it constantly gathered to itself the conservative statesmanship, the practical ability and experience of the nation. Through its censorship of morals and influence upon the *euthyna*, it enjoyed practically the right of selection of its own members, by the exercise of which its conservatism was preserved and fostered. The very fact that its members held office for life, while other public functionaries exercised power for the brief period of a year, contributed enormously to its powers of superintendence and administration. Thus was the Areopagus an irresponsible power, directing the manifold activities of government and people within the lines marked out for it by the constitution. Solon was by no means in favor of popular government; but aimed rather at securing

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<sup>1</sup> The duty relating to magistrates is not mentioned in this connection by Aristotle, but it evidently belonged to the Areopagus as under Draco, the right of appeal to the *Dicasteria* interfering but little with its authority for a time.

<sup>2</sup> Arist., *Ath. Pol.*, ch. 3.

<sup>3</sup> This duty was performed heretofore by the court sitting in the Prytaneum.

the people in their right to peace and happiness. With this in view, he had re-constituted the Ecclesia and probouleutic Senate and had added the popular courts,—all needful as safe-guards against magisterial oppression. On the other hand, he strengthened the new nobility of wealth in their hold upon the government by re-assuring to their representative body its ancient, far-reaching prerogatives. "He was himself, as past archon, a member of this ancient senate, and is said to have contemplated that by means of the two senates, the state would be held fast, as it were, with the double anchor, against all shocks and storms."<sup>1</sup>

A further safe-guard to the constitution was provided in the Sedition Law, which is, indeed, a peculiar measure, and has justly excited the surprise of later thinkers. We must endeavor to view it in relation to the political conditions from which it sprang, and in the light of these, we can understand that it was intended, paradoxical though it may seem, to act as a preventative of sedition, and to maintain in a degree the security and peace of the community. In the Homeric period, the people, while showing an independent spirit, betray a total ignorance of political organization. They owed submission only to persons,—to the gods, and kings, as representatives of the gods on earth. The very idea of a constitution or system of laws commanding their respect and obedience had not yet dawned upon them. Through the decline of kingship and the rise of the *Boule*, the constitution gained in definiteness, yet the sentiment of the people did not undergo a corresponding change. Under the fully developed oligarchy, they thought that they owed respect not to constitutional forms, but to their great faction leaders. How, then, could they be commanded to support the government against insurrection when, in case of strife between two parties, they knew not which represented

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<sup>1</sup> Grote, (small edition) I. p. 593, quoted from Plut., Solon, 19. This probably came ultimately from one of his poems. The Senate of 400 was but one of the three institutions supporting the people's interests, but is here made to represent all.

the one, and which the other? Such a command may be given only when the government is settled, its modes of activity known, and the state organization respected apart from persons in office. On the other hand, it is of the utmost importance, that the people be made to take an interest in the government and to lend their services to its defense, even though their conceptions as to what the government really is, be more or less imperfect. For only through interesting the people in the government, can a statesman look for improvement either in government or people. Accordingly, since seditions were frequent in Attica, and since the continued political apathy of the people was ruinous to all hopes of development, Solon ordered the people in case of sedition to join whichever side they deemed most just. Any one who held aloof from the strife was dishonored and deprived of the citizenship. The ultimate effect of the measure was the political education of the people. For the time being, it was hoped that the great oligarchs would be less likely to engage in factional strife if they knew beforehand that the citizens in a body were to take an active interest in the affair and to decide it by force of arms in the way they should see fit. Thus we can readily understand how it was intended primarily as a check to the feuds between powerful nobles, and how its continuance in force would lead the masses to a participation in the government. It is doubtful, however, whether the law was ever enforced. For it is impossible to conceive how any party or individual in the state could be interested in the prosecution of offenders, or could hope to receive more benefit than injury therefrom. The law was intended, therefore, to have chiefly a moral effect, — and is of interest to us in showing the relation of people to government in those times, and the attempt of a great statesman to remedy a defect in that relation.

Aristotle mentions three measures of Solon as especially favorable to the *Demus*.<sup>1</sup> The first, and most important of

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<sup>1</sup> Ath. Pol., ch. 9.

these, was the prohibition of lending on security of person. Its practical effect was the abolition of clientage, as has been stated above. In the second place, he permitted any one who wished, to go to law in defense of an injured party, a measure tending to weaken the gens. And in the third place, he granted an appeal to the popular courts. The effect of this was hardly felt in the beginning, but it proved ultimately to be the very stronghold of the people's sovereignty.<sup>1</sup> We may mention here as a fourth measure, equally indispensable, the admission of the *Thetes* to partial citizenship.<sup>2</sup> We have seen how, under the gentile system of the Aryans, continued in ancient Greece, the inferiors were, for religious causes, farthest removed from social freedom, from political life. We have seen how the growth of the kingship tended to mitigate their condition, and how again, under the oligarchy, they relapsed into servitude more wretched than before. Only a comparatively small number of these had, by enterprise and good fortune, succeeded in raising themselves above their fellows to a position on a level, in wealth at least, with their Eupatrid rulers. We next observed how, through the Draconian constitution, the Eupatrids took these fortunates into political partnership, that they might more securely and effectually rivet the chains upon the miserable poor. Even Solon's government was still a timocracy with a strong conservative element in the Areopagus, but there had been planted in it, through the four measures above enumerated, a little democratic leaven, which in time leavened the whole lump. Solon is to be regarded as the founder of the Athenian democracy only in this, that his measures rendered the later establishment

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<sup>1</sup> Kenyon (Aristotle's *Ath. Pol.*, p. 25, n., 2d ed.) terms it the one decisive fact in the Athenian constitution, the lever by which the *Demus* brought all governmental powers and functionaries into direct subordination to itself, like the tribunate at Rome in the hands of the Gracchi and their successors, like the control which the English Commons exercised over the financial supplies.

<sup>2</sup> Aristotle, *Politics*, II. 12 (p. 1274 a).

of a democracy both possible, and, in accordance with a natural law of growth, even necessary.

It would be interesting to know Solon's idea in making all his ordinances binding for one hundred years. Did he suppose that he had devised so perfect a scheme of government as to require no modification in that long period? Certainly not; for he himself said that his laws were not absolutely the best, but merely the best under the circumstances. He desired to impress upon the whole people the idea of a permanent, steady government, and he hoped that when better laws should from time to time be required, they might be developed from his own by imperceptible changes rather than by the sweeping innovations of another dictator, or through the wholesale and unprincipled legislation of a capricious assembly. At any rate, he could not, in the face of this ordinance, have granted legislative power to the Ecclesia, or to any other body in the state;<sup>1</sup> for thereby he would have introduced the strongest temptation to break the ordinance on which his hopes were founded, and to undo, perchance, in a single day, the solid benefits conferred by his *politeia*. The most glaring defect in the public character of the Greeks was their want of love for principle, their lack of adherence to constitutional forms. Solon endeavored, though in vain, to supply this defect both by the sedition law and by the ordinance in question. We observe that these two laws bear a certain relation to the work of the Areopagus, their object being, so far as they could be carried out, to re-enforce that body in its maintenance of conservatism.

We come finally to the laws of Solon on various subjects.

He reformed the currency, making 70 *drachmae* of the old weight worth 100 of the new.<sup>2</sup> This has been connected by

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<sup>1</sup> Of course the Ecclesia was at liberty to pass measures which did not conflict with the existing laws. But since these were made to cover all the cases that the legislator regarded as likely to occur, little room, indeed, remained for the legislative activity of the popular assembly.

<sup>2</sup> Aristotle, *Ath. Pol.*, ch. 10; Plut., *Solon*, 15.

some with the *Seisachtheia*; but erroneously, since a depreciation of the currency was needless as a relief measure after the entire abolition of debts. His object rather was to substitute the Euboic standard for the Aeginetan, and thus to bring Athens into commercial relations with Euboea and Asia Minor, where the newly adopted standard was in use.<sup>1</sup>

Another law was made by Solon prohibiting an individual from possessing as much land as he pleased.<sup>2</sup> This was in the interest of the small proprietors. Had such a law been in force from primitive times, there would have been far less need of Solon's sweeping reforms.

He defined by law the conditions on which an alien might receive the citizenship. "He permitted only those to be made free of Athens who were in perpetual exile from their own country, or came with their whole family to trade there; this he did, not to discourage strangers, but rather to invite them to a permanent participation in the privileges of government; and, besides, he thought those would prove the more faithful citizens who had been forced from their own country, or voluntarily forsook it."<sup>3</sup> These conditions were easier than those of a later date, and brought into the state many new citizens. A great number of these became partizans of Peisistratus, fearing an oligarchic reaction, which would endanger their civil status.<sup>4</sup>

He forbade the exportation of all produce of the soil except olive oil. His object in this was to promote the manufacturing industries. The soil of Attica was unproductive, and the country people found it difficult to maintain themselves by agriculture.<sup>5</sup> It was for the promotion of this same end that

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<sup>1</sup> Kenyon, Trans. of the Ath. Pol. of Aristotle, p. 16, n. 1; Rühl, Rhein. Mus., XLVI. p. 450, makes a mistake in supposing that the reform in currency is set down as *demotic*; see Arist., Ath. Pol., ed. Herw. et Leeuw., chapter 10.

<sup>2</sup> Aristotle, Politics, II. 7. 6 (1266b, 17).

<sup>3</sup> Plutarch, Solon, 24.

<sup>4</sup> Aristotle, Ath. Pol., ch. 13.

<sup>5</sup> Grote, History of Greece, (small edition) Vol. I. p. 599, ch. XI, following Plutarch.

he encouraged immigration,<sup>1</sup> regulated the currency, and directed the Areopagus to chastise those who did not live by their own labor. Plutarch says that in this way he "*brought trades into credit.*"

Several laws of Solon have reference to the family and gens. Some of these have already been sufficiently considered. That one which relieved a son of the duty of supporting the father who had failed to teach him a trade, is Aryan in spirit,<sup>2</sup> but may have received its peculiar form from Solon. Akin to this law, is the one which declares that the illegitimate son is free from the burden of gerotrophy. Solon "regulated also the walks, feasts, and mourning of women, and took away everything that was either unbecoming or immodest; when they walked abroad, no more than three articles of dress were allowed them; an obol's worth of meat and drink; and no basket above a cubit high; and at night they were not to go about unless in a chariot with a torch before them."<sup>3</sup> This law marks an epoch in the history of the Athenian family. Heretofore the wife enjoyed great freedom, went abroad at pleasure, and indulged her tastes apparently without hindrance. Now the old freedom of Homeric days began to be restricted. The wife came to be confined more and more to the house, and her influence on the public life of Athens waned through the succeeding years.<sup>4</sup> Solon forbade the giving of large dowries, permitting the wife to take with her only three suits of clothes and an inconsiderable amount of household stuff. His idea in acting thus was that "marriages should not be contracted for gain of an estate, but for pure love, kind affection,

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<sup>1</sup> Plutarch, Solon, 24; cf. Aristotle, Politics, III. 5. 3 (p. 1278 A).

<sup>2</sup> Leist, Graeco-italische Rechtsgeschichte, pp. 13-14. See Plut., Solon, 22. The gerotrophy was regarded by the Aryans as a return for rearing.

<sup>3</sup> Plutarch, Solon, 20.

<sup>4</sup> In the time of Aeschylus, her position was still comparatively high; in the Peloponnesian war it sank to its lowest point. Compare in illustration the position of women in the tragedies of Aeschylus and Sophocles. The humanism of Euripides was the prophecy of better things.

and the birth of children.”<sup>1</sup> The legislator saw that where marriage was a matter solely of business traffic, society must suffer greatly in consequence. Yet the law in time became obsolete, and the abuse of marriage for pecuniary objects went like a poison to the very heart of Athenian society.<sup>2</sup> Another law ascribed to Solon declares that the illegitimate son or daughter is to be debarred from inheritance and from participation in the sacred rites.<sup>3</sup> This law seems to have been designed primarily as a protection against the foreign element now pouring into Attica. Lawful marriage could be contracted only with those of civic birth or of legal adoption into the state family. Those who had no religious or family rights could of course take no part in the government.

Solon made all his laws binding for one hundred years,<sup>4</sup> wrote them on wooden tablets, called *Cyrbeis* by Aristotle, and placed them in the King's Porch. The nine archons on entering office took an oath on the stone where pieces of the sacrificial victim lay, that they would dedicate a golden statue, if they should transgress any of these laws.<sup>5</sup> By Ephialtes they were brought down to the market-place.<sup>6</sup>

After the completion of his work, Solon was constantly annoyed by the visits of persons of every description, some of them finding fault with the laws ; others asking questions as to their meaning and application.<sup>7</sup> It was his desire that their

<sup>1</sup> Plutarch, Solon, 20.

<sup>2</sup> To the reader of Isaeus and Demosthenes (Private Orations) this statement will not appear exaggerated. If there was one spot of madness (or, perhaps, of religious fanaticism) in the Athenian mind, it is the desire to keep the property within the circle of *anchisteis*. This brought marriage into complete subordination to considerations of property.

<sup>3</sup> Pseud. Dem. XLIII. 51, supposed to go back to Solon ; Thalheim, *Die griech. Rechtsalterthümer*, p. 7 with note 1.

<sup>4</sup> Arist., *Ath. Pol.*, ch. 7 ; Plut., Solon, 25.

<sup>5</sup> Arist., *Ath. Pol.*, chs. 7, 55 ; Plut., Solon, 25. Cf. Plato, *Phaedr.*, 235 D ; Pollux, VIII. 86 ; Bergk, *Rhein. Mus.*, XIII. p. 448 ; Sandys, *Arist. Const. of Athens*, pp. 23-24.

<sup>6</sup> Gilbert, *Hdb. d. griech. Staatsalter.*, I. p. 140.

<sup>7</sup> Arist., *Ath. Pol.*, ch. 11 ; Plut., Solon, 25.



letter should be obeyed ; and since he could not, as their interpreter, enjoin this strict obedience without incurring the enmity of all parties, he resolved to absent himself for the space of ten years, making a journey to Egypt for the purposes of trade and observation.

We have noticed that before Solon there were two factions ; — on the one hand, the citizens under the Draconian constitution, on the other, the mass of the population still excluded from everything. The first is termed by Aristotle, the *Gnorimi*, or nobles ; the second, the *Demus*, or commons.<sup>1</sup> This application of *Gnorimi* is demonstrated by the statement of Aristotle<sup>2</sup> that the *Gnorimi* and *Eupori* included the three upper Solonian classes. Aristotle in the Athenian *Politeia*, ch. 11, mentions these two factions as constituting each a separate class of malcontents. Solon's measures had given satisfaction to neither. The *Demus* had hoped for a re-distribution of land ; the nobles desired a restitution of the former *politeia*. Many also of the nobles found a special ground for complaint in the abolition of debts. Had we nothing more than this statement to depend upon, the situation would be exceedingly obscure. It would be impossible to make out who were affected thus by the *Seisachtheia* and who were most desirous of a political reaction. But in chapter 13, Aristotle mentions three classes of malcontents, subdividing one of the factions already mentioned. The first class consisted of those who were disappointed by the abolition of debts ; for they had thereby been reduced to poverty. These were, most certainly, capitalists who had invested their money on security of person and property, and had accordingly through the *Seisachtheia* lost their all. The landlords could not have been affected thus ; for they still possessed their land. All the Eupatrids must have been landowners, and are consequently excluded from this category of sufferers. The force of this reasoning becomes more apparent when we read the statement

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<sup>1</sup> Arist., Ath. Pol., ch. 11.

<sup>2</sup> Politics, II. 12 (1274 a, 18 ff.).

made later on in the same chapter that among the partisans of Peisistratus were those who, made poor by the abolition of debts, had been induced by their desperate financial condition to cast their lot with a champion of the poor. It would be absurd to place these among the Eupatrids. The second class of malcontents mentioned in the 13th chapter included those who were dissatisfied with the great change in the constitution. And what great change introduced by Solon is here referred to? The abolition of clientage and the admission of the Thetes to partial citizenship; for the effect of the *Seisachtheia* is stated separately. None accordingly but the Eupatrids could be disappointed with this change, robbing them, as it did, of the exclusive privileges still remaining to them. The third party was made up of chronic contentionists, the poor of Attica, who having nothing to lose, were ever ready for strife and sedition. In the next sentence, Aristotle identifies these three classes with the three local factions. The capitalists inhabited the Coast and were necessarily timocrats; the Eupatrids dwelt in the Plain and favored an oligarchy; while the poor occupied chiefly the Hills and entertained socialistic and democratic sentiments. Aristotle's explanation of the two factions in chapter 11. is now clear. The faction of nobles contained the capitalists, who had suffered by the abolition of debts; and the Eupatrids who had hoped for a restoration of the pre-Draconian oligarchy. It was not the whole party of nobles who entertained such hopes but only the Eupatrids, who may be considered as giving character to the faction of which they formed so important a part. Before the Solonian reforms, the two classes of nobles were united by common interests against the *Demus*. Nothing could have been easier for Solon than to usurp the throne by siding wholly with one of these contending parties against the other. His friends among the Eupatrids urged him especially to this course of action. His indignant refusal shows a noble, unselfish character; yet it is questionable whether his course was the wisest. The government became settled only under an absolute ruler; and we are not certain

that Peisistratus, though a good master, was better than Solon might have been.

After the departure of Solon, the government continued for four years in peaceful operation.<sup>1</sup> But in 590 a sedition arising prevented election to the archonship. Nothing is here known of the combination of parties, though we may be certain that oligarchs were arrayed against democrats with the middle party of timocrats taking one side or the other. Again in the year 586, the same thing appears to have happened. In 582 Damasias was elected to the archonship; and, in violation of the constitution, continued in office two years and two months, at the end of which period he was driven out by force. A board of ten was then appointed for the management of the government during the remainder of the year, consisting of five Eupatrids, three *Agroeci*<sup>2</sup> and two *Demiurgi*. The interpretation of these facts can only be conjectural. Damasias could not have continued so long in office without the support of a powerful faction. We may suppose that this faction was oligarchic and that his expulsion from office was wrought by a combination of the *Demiurgi* and *Agroeci*. We may suppose also that the Eupatrids still monopolized the chief magistracy in spite of the *de jure* eligibility of rich Plebeians. These conjectures explain the composition of the board of administration, by which the three ranks were represented in the government. If it was intended as a permanent arrangement, which is indeed quite probable, its significance is greatly increased. If distinctions of rank had been obliterated by the adoption of the Solonian timocratic classification of citizens, the inferior ranks were the gainers; and must, therefore, have been most strenuous in opposing a re-acknowledgement of such distinctions. But we find them consenting to a representation by rank and probably even clamoring for it. This cannot mean

<sup>1</sup> Arist., *Ath. Pol.*, ch. 13.

<sup>2</sup> Called *ἀπαικτοὶ*, or *ἀγροικοὶ*, by Aristotle. For the dates given above, see Busolt, *Müller's Hdb.*, <sup>2</sup>IV. p. 155; Bauer, *Literarische und historische Forschungen zu Arist. 'Aθ. Πολ.*, p. 47 ff.; cf., also, Swoboda, *Neue philologische Rundschau*, 1892, p. 51.

that they favored a return to the old order of things, but rather that distinctions of rank had not been effaced *de facto*; and that the lower ranks had never been represented, fairly at least, in the government. Political equality was not attained at Rome till the adoption of the Licinian Rogations, a clause of which provided that one of the consuls must be a Plebeian. So at Athens, the institution of this board, composed of Eupatrids and commoners in equal proportion, was a concession to the latter, securing to them for the first time an adequate share in the administration.<sup>1</sup> This form of government continued only through the rest of the year, and at the beginning of the next the ordinary arrangement was resumed. In all the elections of this period the strife concerned chiefly the office of Archon (Eponymous) thus showing, as Aristotle says, that it was the chief magistracy. But another fact clearly implied in this statement, is that the Solonian form of election was, at least in the case of this office, not adhered to. For how could the strife center about an office filled by lot from forty candidates? Surely the people must have had some direct way of making their choice of Archon felt, and that could be only by direct election.

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<sup>1</sup> Kenyon, Aristotle's *Ath. Pol.*, p. 34, n., supposes that the Eupatrids were authors of this scheme, being dissatisfied with the Solonian constitution in that it admitted the wealthy commoners to a share in the government. But this view does not go a step toward explaining the situation. We are rather to regard the Eupatrids as still monopolizing political privileges, now granted legally to others. It was only by a coalition of capitalists and laborers that these exclusive privileges could be wrested from the Eupatrids; and when the coalition ceased, the Eupatrids would again recover their former position. On the Solonian Constitution: Aristotle, *Ath. Pol.*, chs. 5-13; Plutarch, *Solon*; Grote, *History of Greece*, ch. XI., (small edition) I. pp. 576-612, (large edition) II. pp. 460-524; Curtius, *History of Greece*, I. pp. 339-377; Oman, *History of Greece*, pp. 106-113; Cox, *Greek Statesmen*, I. pp. 1-32; Busolt, *Griechische Geschichte*, I. p. 524 ff.; Busolt, in Müller's *Hdb.*, <sup>2</sup>IV. pp. 144-154; Gilbert, *Hdb. d. griech. Staatsalter*, I. p. 129 ff.; Landwehr, *Philologus*, Supplbd. V. (1884) p. 130 ff.; Holm, *Griechische Geschichte*, I. p. 466 ff.; Thumser, *Die griech. Staatsalterthümer*, p. 371 ff.; Philippi, *Beiträge zu einer Geschichte des attischen Bürgerrechts*, p. 185 ff.; Lehmann, *Zur 'Αθηναίων Πολιτεία*, in *Hermes*, 1892, XXVII. pp. 530-560; Leyds, *Zur ältern attischen Geschichte*, in *Neue Jahrbücher für Philol. und Paed.*, 1892, p. 88 (on the archonship of Damasias); Bauer, *Literarische und historische Forschungen zu Aristoteles 'Αθηναίων Πολιτεία*; Keil, *Solonische Verfassung in Aristoteles Verfassungsgeschichte Athens*.

## CHAPTER X.

### THE TYRANNY.

Sedition continued. Megacles was leader of the moderate party; Miltiades, and afterwards Lycurgus, of the oligarchs; Peisistratus, of the democrats. These three parties were located in the Shore, Plain, and Hills respectively. The Diacrians, or Hillmen, were joined by the *Thetes* throughout Attica, and by those who had been reduced to poverty through the abolition of debts, in the hope that the next political game might reverse their former ill-luck. Many aliens also, who, under the Solonian government, had by means of their wealth, gained the *politeia*, now began to fear a reaction in favor of oligarchy and, with its establishment, a purification of the list of citizens. Such persons joined the democratic party expecting that their services to Peisistratus in his political schemes would win for themselves under his patronage security in their usurped rights. Their offers of assistance were readily accepted.

Peisistratus had acquired a brilliant reputation as leader in a war with Megara,<sup>1</sup> probably about the year 565 B.C.<sup>2</sup> He

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<sup>1</sup> Herodotus, I. 59.

<sup>2</sup> Holm, *Griechische Geschichte*, I. p. 481; Sandys, *Arist. Const. of Athens*, p. 54. Plutarch (Solon, 8) regards this war as the one preceding the archonship of Solon, and resulting in the capture of Salamis; but this is improbable, and is rejected by Aristotle (*Ath. Pol.*, ch. 17) on the ground that Peisistratus could not have been old enough at that date (about 600 B.C.) for participation in military service. Besides, a reputation gained in 600 B.C. would have availed him but little in his political manoeuvres in the year 560, when the glory of his achievements would have grown dim in the interval of forty years. But we know from Plutarch (Solon, 12) that the Megarians again encroached upon Attica, and took advantage of the civil confusion for the occupation of Salamis and Nisaea. It is quite likely that a third war took place some time after, in which the Athenians under Peisistratus regained Nisaea, and won great glory for their

now presented himself as champion of the poor. While acting as their liberal benefactor, he succeeded in winning the friendship of many others through his admirable personal qualities. He was candid and generous to enemies, forgiving of injury, and highly cultivated in manners.<sup>1</sup> There can be no doubt that his patronage of the poor called forth bitter opposition from his political opponents, and it is not hard to believe that his life was actually in peril. One day he came before the people in the market-place and declared that his enemies had been making attempts upon his life, showing, as proof, the wounds which, he affirmed, they had inflicted upon himself and his mules.<sup>2</sup> His ruse was successful,—the people, on the motion of Ariston, voted him a body-guard of fifty club-men<sup>3</sup> in spite of Solon's earnest warnings. This took place without opposition on the part of the nobles. They were probably not expecting such an event, and the few who were present lacked the boldness to prevent it, while the poor, it is said, were too ignorant to perceive the trick. This is the meaning of Solon's statement that he was wiser than one party and bolder than the other; for he both foresaw the danger and bravely strove to avert it.<sup>4</sup> The people cared but little how many guards their patron chose to keep; and in a brief season they had grown into a formidable band. With this he seized

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leader. If we assume the approximate date of this war to be 565, we may readily understand "how the reputation won by his successful conduct of it would help him powerfully in his bid for the tyranny, which would hardly be the case if his victory were some forty years old"; Kenyon, *Arist. on the Const. of Athens*,<sup>2</sup> p. 38, n.

<sup>1</sup> *Arist., Ath. Pol.*, ch. 16.

<sup>2</sup> *Hdt. I. 59*; *Arist., op. cit.*, ch. 14; *Plut., Solon*, 30. Plutarch regards his whole character as insincere, while no historian seems inclined to believe the story which he tells of his enemies' attempt upon his life. Plutarch's censure is too severe; yet, on the other hand, we may accept the account of his wounding himself as well attested, and in keeping with his other devices for the attainment of political objects. Further references to authorities are given by Sandys, *Arist. Const. of Athens*, p. 54.

<sup>3</sup> Cf. *Plato, Rep.* 566 B; *Arist., Rhet.*, I. 2. 19.

<sup>4</sup> *Plut., Solon*, 30.

the Acropolis, and took control of the government, in the archonship of Comeas, 560 B.C.<sup>1</sup> Megacles and the other Alcmaeonidae went immediately into exile, and Peisistratus governed quietly for five full years.<sup>2</sup> He administered affairs wisely and moderately, adhered to the laws and constitutional forms, and avoided acting arbitrarily. Solon himself appears to have been happily deceived in the administrative character of Peisistratus, and to have aided him with his advice and support.<sup>3</sup> But before his power was well established, a coalition between the oligarchs and timocrats forced him into exile, in 555 B.C. The length of his first period of exile has not been satisfactorily determined.<sup>4</sup> Megacles, representative of the capitalists, naturally concluded that nothing was to be gained by civil strife, and made overtures of friendship and political alliance to Peisistratus, offering his daughter in marriage to the latter. The terms were accepted, and Peisistratus returned to Athens through an "old-fashioned and exceedingly simple stratagem." Having caused a report to be circulated that Athena was conducting Peisistratus back to Athens he placed by his side on his chariot a tall, beautiful woman to represent the goddess, and thus rode into the city, the people receiving the pair with awe and reverence.<sup>5</sup> He came, indeed, as a beneficent deity to the people, delivering them from oppression and the whole country from civil strife. But his alliance with Megacles was short-lived. Fearing the curse attaching to the family of the Alcmaeonidae, he failed to consummate his marriage with the daughter of Megacles, thus incurring the enmity of the father. To escape a second coalition of Eupatrids and capitalists, he withdrew in secret from Athens,<sup>6</sup>

<sup>1</sup> Arist., *Ath. Pol.*, ch. 14 ; Plut., Solon, 32 ; cf. Sandys, *Arist. Const. of Athens*, p. 55, n. on ἐπὶ Κωμέου.

<sup>2</sup> As reckoned by most historians, cf. Sandys, *op. cit.*, p. 56.

<sup>3</sup> Plut., Solon, 31.

<sup>4</sup> Eleven years, according to Arist., *Ath. Pol.*, ch. 14 ; but this is evidently too great. The estimates of the modern historians range from three to six years.

<sup>5</sup> Cf. Hdt. I. 60.

<sup>6</sup> 545 B.C., according to Kenyon, *Arist. on the Const. of Athens*,\* pp. 39, 40.

and settled in the district about the range of Pangaeus in Macedonia, and spent many years in working the rich mines of that section, using some of the wealth thus acquired in hiring mercenaries. Then coming to Eretria, he brought into his alliance the knights of that city, the Thebans, Lygdamis of Naxos, and many others. With these forces, in addition to the mercenaries, he returned to Attica,<sup>1</sup> defeated the Athenians at Pallenis, and once more took control of the government. By one of his clever stratagems he deprived the people of their arms, then telling them in the Ecclesia what he had done, bade them not to be surprised or dejected, but to go about their own duties, saying that he would henceforth attend to all governmental affairs.<sup>2</sup> No doubt he was driven to the employment of mercenaries and the disarming of citizens not by the discontent of the people, but by the opposition of his political adversaries, Megacles and Lycurgus. He is to be regarded as a father to the people, like the gentle Codrus, whose successor Peisistratus endeavored to be in the strict sense of that relation. Accordingly, he took up his abode on the Acropolis, on the spot where the family hearth of the ancient kings still stood, dedicated to Zeus *Herceius*,—desiring that his usurped power might thus receive the strong sanction of religion, that the pikes of mercenaries might in time be replaced by the more potent spiritual force of the commonwealth's sacred hearth. He endeavored, in a word, by means of this and other acts, to convert the *tyrannis* to a *basileia*.<sup>3</sup> The policy of his former rule was repeated on a more liberal scale. He was humane in his ordinances, ready to pardon offenders, mild and gentle in demeanor, and generous to the needy. While pursuing a foreign policy vigorous for the time and country, his main energies were directed to domestic improvements.

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<sup>1</sup> 535 B.C., according to Kenyon, *loc. cit.*; 541, according to Gilbert, Hdb. d. griech. Staatsalter., I. p. 140; cf. Sandys, Arist. Const. of Athens, p. 56. For his alliances, see Arist., Ath. Pol., ch. 15; Hdt. I. 61.

<sup>2</sup> Cf. Polyænus, I. 21. 2.

<sup>3</sup> Cf. Curtius, History of Greece, p. 389 f.



The city was renovated, public works erected, religion, art, architecture, literature, and all the known forms of culture promoted.<sup>1</sup> The laws of Solon were enforced so far as they did not conflict with his supremacy, and the people were trained to peaceful, quiet life, obedience to law and constitutional forms.<sup>2</sup> The populace loved and adored him as a benefactor, and many of the nobles were pleased with his reign, because of the vast social and intellectual advantages which their relation with his court conferred. Peace reigned and the golden age of Attic history had come. It seems to have been his chief object to promote the interests of agriculture and country life. With this end in view, he forbade, on the one hand, loitering in the market place, and limited the right of residence in the city; on the other hand, he loaned sums of money to the peasants and bought them small farms; so that these entered upon a remarkable stage of prosperity, strongly contrasted with their wretched, grovelling condition under the oligarchy.<sup>3</sup> Nor did he permit them to come to Athens even for the purpose of litigation; but appointed itinerant judges to pass through the country settling disputes. Often he himself visited the country with the same object.<sup>4</sup> By encouraging the people to attend to their own interests and by engaging the services of many in the construction of public works, he greatly promoted their welfare and the common peace and quiet of the whole country. Faction ceased. Those nobles who were too proud to submit retired into the country or went abroad,<sup>5</sup> and those who remained were taught that the laws of the nation were more powerful than they. His promotion of industry was partially an economic policy in his own interest, since he levied an income tax of one-tenth; and partially political, inasmuch as his measures drew the people

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<sup>1</sup> Holm, *Griechische Geschichte*, I. p. 488 ff.

<sup>2</sup> Arist., *Ath. Pol.*, chs. 14, 16; *Hdt.* I. 59; Thuc. VI. 54.

<sup>3</sup> Arist., *op. cit.*, ch. 16; cf. *Politics*, VIII. (V.) 10 (p. 1311 a, 14).

<sup>4</sup> Cf. Sandys, *Arist. Const. of Athens*, p. 63, notes on §§ 5-6.

<sup>5</sup> Holm, *op. cit.*, p. 485 f.

away from the center of political life and fastened their attention upon other things. It would be absurd to suppose that in all this, Peisistratus was actuated by purely selfish motives or the love of present enjoyment. His motives were those of a far-seeing statesman with the permanent good of his country at heart. In such a spirit, he passed the ordinance providing for the wounded in war and for the families of those fallen in battle. In the same spirit, he himself conformed to the laws of the land, obeying a citation before the court of the Areopagus, and would have submitted to his trial, had not the accuser failed to appear. A selfish potentate of that age and nationality must have delighted in asserting his superiority to law ; but Peisistratus never assumed an advantage over his fellow citizens. He ruled without title or office, allowing the machinery of government to run as the constitution prescribed, but keeping some member of his family in one of the higher magistracies.

Peisistratus had now reached an advanced age, and died of sickness in the archonship of Philoneos,<sup>1</sup> 527 B.C., having ruled nineteen years. The rest of the time from his first usurpation had been spent in exile. He left four sons ;—two, Hippias and Hipparchus, of a woman of civic birth whom he had married according to Athenian usage ; and two, Iophon and Hegesistratus, surnamed Thettalus, of an Argive woman, with whom a marriage could probably not at this time be legally contracted. For this reason, her two sons are called *νόθοι* as the off-spring of a marriage with a foreign woman.<sup>2</sup> Hippias was the eldest and best adapted by nature to public life. He accordingly succeeded to his father's power and policy, though Hipparchus was closely associated with him as patron and minister, so to speak, of art, literature, religion, and general culture. It was the latter who invited to the court of the

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<sup>1</sup> Arist., *Ath. Pol.*, ch. 17; Thuc. VI. 59; Sandys, *op. cit.*, p. 65 ff.

<sup>2</sup> This I regard as the best explanation of the passages in Hdt. V. 94 and Arist., *Ath. Pol.*, ch. 17; cf. Sandys, *op. cit.*, p. 66.

Peisistratidae the great poets, — Anacreon and Simonides, among others of less distinction.<sup>1</sup>

The rule of the sons, was wise and moderate, like that of the father ; “and, for tyrants, these men in the greatest degree studied virtue and intelligence. And though they exacted from the Athenians only one-twentieth of their income, they adorned their city in a beautiful manner, and carried on their wars and provided sacrifices for the temples. The state enjoyed, too, the laws which had been previously enacted, in all other respects, except that they always took care that one of their own family should hold the offices.”<sup>2</sup> But a great change came with the assassination of Hipparchus. Hippias at once became suspicious and cruel, killing and banishing many nobles whom Aristogeiton had been prevailed upon by torture to denounce. He did not spare his own friends, but was distrustful of all alike. His subjects felt keenly this change of policy and were now ready for outbreak, provided the slightest hope of success should be offered. After about three years of harsh tyranny, Hippias, perceiving the menacing disposition of the citizens, began to fortify Munychia with the intention of changing his quarters from the Acropolis to that position. For in case of rebellion or interference of foreign powers, he would be able to hold out longer from the latter stronghold, receiving supplies by sea ; and, if finally beaten, he could more easily effect his escape from Attica to a place of retreat which he had already prepared in Sigeium. In the meantime, the Alcmaeonidae, who had long been in exile, were attempting to return by force. After several fruitless efforts, they succeeded, through their influence on the oracle at Delphi, in inducing the Lacedaemonians to put down the tyranny, although the Peisistratidae were on terms of intimate friendship with the Spartan authorities. Perhaps the alliance between Athens and Argos added no little weight to the injunction of the oracle that “*Athens must be free.*”<sup>3</sup> The Lacedaemonians under

<sup>1</sup> Arist., Ath. Pol., ch. 18.

<sup>2</sup> Thuc. VI. 54.

<sup>3</sup> Arist., Ath. Pol., ch. 19.

Cleomenes, their king, invaded Attica, and with the help of the Athenians besieged Hippias in the Acropolis. The children of the Peisistratidae while being conveyed through the besieging lines fell into the enemies' hands. To secure their safety, Hippias agreed to surrender the Acropolis and withdraw from Attica within five days, taking his friends, mercenaries, and property with him. This occurred in the archonship of Harpactides, 511 B.C. He went first to Sigeium, then to his son-in-law Aeantides at Lampsacus, and finally to the court of King Darius.<sup>1</sup>

The tyranny was, in a certain sense, an advance beyond pre-existing forms of government. The rule of the ancient *Basileus* had been personal, irresponsible. The oligarchy introduced a definite, preconceived system of government—a constitution, and thus made a great improvement upon the *basileia*. But to the common people, it was, for the time being, a retrogression,—the substitution of many rulers in place of one, of a soulless corporation in place of an individual whose sympathies could be touched. The Draconian constitution widened the oligarchy,<sup>2</sup> but increased the misery of the poor. Solon's laws were favorable to the commons, yet were of little effect owing to sedition. The Peisistratidae enforced the measures of Solon and passed still further ordinances in the interest of the poor. They crushed the oppressive power of the great nobles, compelled them to obey the laws, and elevated the inferior ranks, thus bringing about a political and social equality. Political equality under their rule, meant, indeed, a political nullity; yet this leveling process affected powerfully the public life of the Athenians, when once they were set free from their political fetters. The Peisistratidae

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<sup>1</sup> Thuc. VI. 59. I have not attempted a detailed history of the period of tyranny at Athens. Before the discovery of Aristotle's *Politica* the main facts were known and the relation of the tyranny to the development of the constitution was thoroughly appreciated by Curtius and others. Some interesting matter has been added, but nothing to alter our impression of the period as a whole.

<sup>2</sup> By transferring the sovereignty from the Areopagus to the Ecclesia.

forced the whole nation into constitutional grooves, compelling the people to follow these till it became with them a second nature. They also promoted morality, religion, intelligence, and culture in general, all of which are essential to an individual or a nation that would prosper in self-government. They pursued a policy of internal improvement which greatly heightened the material welfare of the people, and especially of the peasant class. On the other hand, certain disadvantages are inherent in the nature of tyranny. One of these is the political stagnation of the people. A slave can hardly be a perfect man, though he abound in all other blessings of life ; and the uncertainties connected with his existence rob him of happiness. So the Athenians could not at any time have been perfectly satisfied with the rule of the Peisistratidae ; and the harsh and bitter policy of Hippias in the last three years of his reign justified them in their fears, and in after ages filled their memories of the tyranny to the utter oblivion of all the advantages which it had conferred.<sup>1</sup>

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<sup>1</sup> Details of this period may be found in Arist., *Ath. Pol.*, chs. 14-19; Plutarch, *Solon*, 30 ff.; Herodotus, I. 59 ff.; Grote, ch. XXX., (small edition) II. pp. 58-70, (large ed.) III. pp. 324-345; Cox, *Greek Statesmen*, I. pp. 33-58; Curtius, *History of Greece*, I. pp. 371-400; Plass, *Die Tyrannis*, I. pp. 186-211; Landwehr, *Philol.*, Supplb. V. p. 102 n.; Mahaffy, *Social Life in Greece*, pp. 82, 87, 137-8, 144; Busolt, *Griechische Geschichte*, I. pp. 540-623; Holm, *Griechische Geschichte*, I. pp. 484-502 (see especially list of authorities, p. 501); Thumser, *Die griech. Staatsalterthümer*, pp. 391-5; Sandys, *Aristotle's Constitution of Athens*, notes on chs. 14-19.

## CHAPTER XI.

### THE CLEISTHENEAN CONSTITUTION AND ITS DEVELOPMENT TO THE BATTLE OF SALAMIS.

The fall of the tyranny was followed by a renewal of the party strife. Cleisthenes, leader of the Paralians and champion of the *Demus*, was opposed to Isagoras, leader of the Pediaeans and friend of the Peisistratidae, in a contest for the archonship for the year 508.<sup>1</sup> From this it appears that the Solonian mode of filling the archonship was still in abeyance. Isagoras, with the assistance of political clubs, gained the day. Cleisthenes then appealed to the people, promising them the *politeia* in return for their support. His immediate object seems to have been to keep Isagoras from occupying the office to which he had been elected. In this he might have succeeded, had not Isagoras, being inferior in power, called for help on his friend, Cleomenes, king of Sparta, and induced the latter to force the expulsion of the Alcmaeonidae on the ostensible ground of the curse attaching to their gens. As Cleomenes entered Attica, Cleisthenes fled with a few friends and relatives. The Spartan king then expelled 700 families of the Athenians designated by Isagoras as supporters of Cleisthenes. After this he attempted to destroy the *Boule* of 400,<sup>2</sup> to overthrow the Solonian constitution and to establish an oligarchy of 300 with Isagoras at the head.<sup>3</sup> But the government was, for the first time in Athenian history, able to take care of itself without the aid of nobles. The *Boule* of 400 opposed the

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<sup>1</sup> Arist., *Ath. Pol.*, ch. 20; Sandys, *op. cit.*, p. 77, n. on XXI. § 1.

<sup>2</sup> Herodotus and Aristotle mention the *Boule* without further definition. It could hardly have been the Areopagus since the latter was now filled with friends of the tyrant.

<sup>3</sup> Hdt. V. 72.

oligarchic movement, collected the people and forced Cleomenes and Isagoras to take refuge in the Acropolis. It then laid siege to the citadel and on the third day Cleomenes and Isagoras agreed to withdraw from Attica. The adherents of the latter were abandoned to their fate, and the exasperated Athenians put them all to death. Cleisthenes and the exiled families were recalled. He had gained great popularity as champion of the people's rights, and was chosen forthwith as their leader and legislator. All this happened in the year 508. Before its close he had given to the country a constitution far more democratic in its tendencies than that of Solon.

He first instituted ten new *phylae* in place of the four old ones,<sup>1</sup> which were permitted to remain merely as religious organizations. He allowed also the *gennetae* to continue in their own gentes and phratries, and to retain their sacred rites according to ancient usage;<sup>2</sup> but seems to have created new phratries for those who were not members of any gens.<sup>3</sup> For the institution of new tribes, he first divided Attica into demes, probably more than one hundred in number.<sup>4</sup> Some of these he found already existing as component parts of the naucrary, or old Attic town, while some he may have erected by the union or subdivision of other localities. Those not already furnished with a name, he designated by the name of the place or of the most important gens inhabiting it.<sup>5</sup> Of these demes were formed thirty *trittyes*, ten to each of the three local districts of Attica. The *trittyes* were then assigned by lot to the tribes, in such a manner that every tribe contained three

<sup>1</sup> Arist., Ath. Pol., ch. 21; Hdt. V. 66, 69; cf. Arist., Politics, III. 2 (p. 1275 b, 37).

<sup>2</sup> Arist., Ath. Pol., ch. 21.

<sup>3</sup> Arist., Politics, VII. 4 (p. 1319 b, 20 ff.); cf. Buermann, Die attischen Neubürger und die Kleisthenischen Phratrien, Jahrbücher für classische Philologie, Supplb. IX. p. 610 ff.; Busolt in Müller's Hdb., <sup>2</sup> IV. pp. 160-1, 207 ff.; Sandys, Arist. Const. of Athens, p. 83, n. on τὰ δὲ γένη—πατρια.

<sup>4</sup> Hdt. V. 69 (the interpretation is uncertain); Busolt, *op. cit.*, p. 158, holds the view that there were 100; cf., however, Grote, ch. XXXI., (small edition) II. pp. 73-4, and Sandys, *op. cit.*, pp. 79-80, n. on § 4.

<sup>5</sup> Thumser, Die griech. Staatsalterthümer, p. 403.

*trittyes*, one from each local division. His object in the institution of new tribes was to obliterate distinction of rank. In the old gentile organization, the Eupatrids counted for everything; and the new citizens appeared as intruders, contaminating by their presence the *sacra* of the religious tribes. The sentiment continually found expression that only members of the gentes should share in the privileges of tribal membership, and thus in the general government. In the new tribes, there lingered no such associations of caste and religion; but all were to stand on the same footing so far as property qualifications allowed. Equality was promoted by adding the name of the deme to that of the individual, in place of his father's name as formerly. In this way the new citizens could not be distinguished from the noblest Eupatrids. All free inhabitants of a deme at the time of its erection were enrolled in its register and became thereby members of the deme and citizens of Athens. There were enrolled also many aliens and slaves lately enfranchised, as it would seem. Aristotle<sup>1</sup> tells us that Cleisthenes admitted these to the tribes. Their admission to the phratry and thus to the *ἱερὰ καὶ θόρα* was probably subject to conditions unknown to us. Certain decrees conferring the citizenship granted admission to any phratry which the individual might choose except those especially reserved by law. Later decrees allowed free choice of phratry, as well as of deme and tribe. The purpose of the phratry was to watch over the purity of citizenship and to maintain the civic rights of Athenian youths till their enrollment in the deme-book. It also maintained the *sacra* of Apollo *Patrôus* and Zeus *Herceius*, a participation in which was an essential qualification to office.<sup>2</sup>

<sup>1</sup> Politics, III. 2 (p. 1275 b, 37).

<sup>2</sup> On the phratry since Cleisthenes: Philippi, Beiträge zu einer Geschichte des attischen Bürgerrechts, p. 172 ff.; Buermann, *op. cit.*, pp. 597-619; Szanto, Untersuchungen über das attische Bürgerrecht; Zur attischen Phratrien und Geschlechtsverfassung, Rhein. Mus., XL. p. 506 ff.; Sauppe, De phratriis atticis commentatio; Tarbell, A Study of the Attic Phratry, American Journal of Archaeology, Vol. V. No. 2, pp. 135-153; Paton, The Deceleian Inscription and the Attic Phratries,



The demes were erected for religious, military, financial, and general administrative purposes, and took the place of the former naucraries.<sup>1</sup> It is distinctly implied in the statement of Aristotle and others that the naucraries were altogether abolished by Cleisthenes or set apart from all connection with the government. Besides, the number of naucraries to the tribe is absolutely irreconcilable with the number of *trittyes* to the tribe. Still further, the naucrary, in order to be a "district" at all, must have its two demes adjacent. We know that a systematic arrangement of the demes in pairs must have conflicted with the arrangement of demes in *trittyes*, as stated by Aristotle. We have no ground for supposing that the naucrary was ever a "marine district." It was rather an administrative district and was superseded in this capacity by the Cleisthenean deme.

The distribution of demes among the tribes has been explained above. The object of this systematic promiscuity of arrangement was twofold. First, every tribe had one *trittys* in the vicinity of the capital, that it might the more conveniently secure a representation in the Ecclesia. Had the tribes embraced each a continuous territory, some of them must have been remote from Athens. It would be difficult for these to send even a small delegation to the national assembly, or to hear of an extra session called in haste. Solon found it diffi-

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Classical Review, V. pp. 221-3; Busolt in Müller's Hdb., <sup>2</sup>IV. pp. 160-1, 205-211; Thumser, Die griech. Staatsalterthümer, p. 397 ff.; Sandys, Arist. Const. of Athens, p. 83.

<sup>1</sup> Aristotle, Ath. Pol., ch. 21, says "he instituted demarchs exercising the same functions as the former naucrars, and he created demes in place of the naucraries." The testimony of later writers, with one exception, confirms the statement of Aristotle, if, indeed, there is need of confirmation. Pollux, VIII. 103, says, "Demarchs are rulers of demes. They were formerly called naucrars, while the demes were also called naucraries." Hesychius, *s. v.*, says the demarchs are "those who were formerly called naucrars"; cf. Photius, *s. ναύκραροι*. Only Cleidemus states that each of the new tribes contained five naucraries, and each naucrary two demes. Busolt, Müller's Hdb., <sup>1</sup>IV. p. 120, and n. 5, says, accordingly, that the naucraries were retained only as marine districts, endeavoring thus to save the bad authority of Cleidemus. But in this he has not succeeded.

cult in his time to interest the common people in governmental affairs, and now it seemed unlikely that men would leave their work and travel in any great numbers from the remote parts of Attica to attend an assembly, especially when they received no compensation for their time. Thus it would happen that the tribes occupying Athens and vicinity would practically control the government in their own interests. All this was prevented by the arrangement whereby each tribe could be represented by the demes in and near Athens, whose *δημόται* might attend the Ecclesia without discomfort or self-sacrifice. A still more important reason, and the only one usually given, is that such a distribution of the component parts of the several tribes destroyed all possibility of local faction. Cleisthenes remembered the strife between the men of the Hills, Shore, and Plain, with its resulting evils, and resolved once for all to prevent the possibility of its recurrence. His far-sighted statesmanship in this is proved by the fact that no local disturbance ever arose in Attica from that day forth. The synoecism of Attica was now completed beyond every fear of a relapse. The tribes were created for the same purposes as the demes. Accordingly, they served as a foundation for the military, financial, and general administrative organization of the state. Like the deme also, they possessed a religious character and celebrated sacred rites and festivals. Cleisthenes desiring the sanction of a higher authority than man in naming the new tribes, consulted the oracle at Delphi. Apollo answered by selecting ten eponymous heroes for the tribes from a list of one hundred *archegetae*, or "founders," sent to him by the Athenians.<sup>1</sup>

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<sup>1</sup> Authorities on the Cleisthenean demes, *trittyes* and *phylae*: Hermann, *Political Antiquities of Greece*, p. 217 ff.; Schömann, *Assemblies of the Athenians*, pp. 353-361; Athenian Constitutional History, p. 64 ff.; Grote, *History of Greece*, ch. XXXI., (small edition) II. p. 71 ff., (large edition) III. p. 347 ff.; Cox, *Greek Statesmen*, I. pp. 61-5; Holm, *Griechische Geschichte*, I. pp. 504-6; Landwehr, *Philologus*, Supplb. V. p. 161 ff.; Philippi, *Beiträge zu einer Geschichte des attischen Bürgerrechts*, pp. 147, 155 ff., 239 f.; Szanto, *Untersuchungen über das*

It has been generally supposed that Cleisthenes through these measures effected a complete transformation in the character of the state, that he, in a word, converted the clan state into a political state. I wish to show that this view is erroneous.

1. The new tribes and demes were patterned after the old tribes and gentes. As the old tribes and gentes were originally local as well as religious, so were the new tribes and demes originally local as well as religious. As the former ceased in time to be purely local, so did the latter. With the old organization, the local idea was obliterated more than with the new; but this is due to greater age and to outside influences. The local character of the deme was also in time weakened by the fact that membership in a deme did not change with change of residence. Thus it had in this respect the purely family and not territorial character.

2. In the manner of admission to citizenship the two organizations were alike. There remained, as before, but two sources of citizenship, viz., birth and adoption. The phratry had in its keeping the *ἱερὰ πατρῷα*, without which no man could enter the offices of state. And whether the phratry exercised the right to select its members, as Philippi supposes, or whether a new citizen secured admission to the phratry of his choice through a decree of the people, as Buermann maintains, it all amounts to the same thing so far as the present question is concerned. In any case, the phratry adopted the new citizen into itself, — one of the sub-families of the state, — and into its religious worship; and as participants in a common worship, the *phrateres* regarded one another as kinsmen. All this is

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attische Bürgerrecht, p. 32 ff.; Die Kleisthenischen Trittyen, Hermes, XXVII. pp. 312-5; Dittenberger, Die Kleisthenischen Phylen, Hermes, IX. p. 385 ff.; Leake, On the Demi of Attica, in Transactions of the Royal Society of Literature, <sup>2</sup>I. II. p. 114 ff.; M. H. E. Meier's Ross, Die Deme in Attika und ihre Vertheilung unter die Phylen; Sauppe, De demis urbanis; Gilbert, Hdb., I. p. 189 ff.; Müller's Hdb., <sup>2</sup>IV. p. 211 ff.; Thumser, Die griech. Staatsalterthümer, p. 400 ff.; Sandys, Arist. Const. of Athens, pp. 78-82, notes.

easily understood of the phratry, when we reflect that it consisted originally of kindred alone, and that the principle of fictitious adoption was most potent in ancient times. There seems at first sight some objection to calling the deme a fictitious gens; yet it was by no means absolutely fictitious. Many a deme was inhabited by a Eupatrid gens with those who were its former dependents and sharers in its worship. With the tribe, fiction played a still greater part, yet even the tribesmen felt a certain kinship for one another as participants in the tribal worship,<sup>1</sup> and they must certainly have cherished as warm a faith in their heroes as the Eupatrids in those of a more ancient adoption.

3. No provision was made whereby an alien might in future acquire citizenship by residence in a deme. The Athenians were as exclusive as ever. Nay, they grew more and more exclusive as time went on. The Eupatrid of old believed that his religion was desecrated by the presence of a stranger, and therefore aliens must be forever shut out from participation in the government. The Athenian in the time of Demosthenes excluded strangers from the citizenship for the protection of his *ἱερὰ καὶ δόξα*.<sup>2</sup> What was the difference then between the oligarchic and the democratic state in regard to the family character and in regard to its relations with aliens in blood and religion? None, whatever. There had been an adoption of many new citizens into the state family. There had been a reconstruction of the state to bring about the equalization of ranks. In all this there had been an extensive application of the "legal fiction," but the character of the state remained the same.

In immediate connection with the new tribal arrangement, is mentioned the re-organization of the probouleutic Senate, whereby it was to consist of 500 in place of 400, fifty from

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<sup>1</sup> See above p. 1, n. 1.

<sup>2</sup> (Demosthenes) LIX. 92 and 106; cf. Dem. LVII. 3.

each *phyle*. The manner of appointment is not mentioned and must therefore have been by lot, as formerly, since any peculiarity in the mode of election would have been noticed by Aristotle.<sup>1</sup> It certainly performed probouleutic functions at this time ; and began naturally, in the absence of frequent sessions of the Ecclesia, to assume large administrative power. It may be stated with confidence that the senate of 500 exercised some judicial functions, just as every other administrative power in the state. At one time in its history, we know not when, it possessed authority to punish by fine, imprisonment, and even death, which authority was afterwards taken from it and given to the popular courts.<sup>2</sup> It is possible or even likely that this power dates from the time of Cleisthenes and that it was his intention to transfer the whole judicial authority of the Areopagus to the new senate. Such a supposition is in harmony with his democratic policy and with his well-known hostility to the Areopagus. While therefore the senate of 500 may have started with extraordinary judicial competence which was afterwards transferred to the popular courts, its recognized executive and supervisory powers were gradually limited by the rise of the popular assembly. Several years after the reforms of Cleisthenes, in the archonship of Hermoucreon, probably 501 B.C.,<sup>3</sup> the oath which the *Boule* was required to take assumed that form which continued through all the remaining time of the democracy. Its chief provisions seem to have been, to perform the senatorial functions according to the law, to maintain the Solonian constitution, to work for the highest good of the people, to reject, in the *docimasy* of the succeeding *Boule*, any unworthy candidate.<sup>4</sup>

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<sup>1</sup> Arist., Ath. Pol., ch. 21.

<sup>2</sup> Id. ch. 45.

<sup>3</sup> Kenyon, Arist. on the Const. of Athens, p. 57, n.

<sup>4</sup> Gilbert, Handbuch d. griech. Staatsalter., I. p. 252. Gilbert adds the clause prohibiting the imprisonment of citizens except under specified circumstances ; yet this probably did not belong originally to the oath.

Authorities on the *Boule* of 500 : Hermann, Political Antiquities of Greece, pp. 244-252 ; Grote, History of Greece, ch. XXXI., (small edition) II. p. 78, (large

The *Boule* of the Areopagus had, under the tyranny, become filled with friends of the Peisistratidae, and must therefore have now appeared as an enemy to the new government. Probably no measures were passed in relation to it; but its authority was silently disregarded. Feeling that any self-assertion at this time would be suicidal, that body cautiously held itself in the background, while it gradually changed in character and political sentiment by the reception of ex-archons who had filled office under a more popular constitution.

The Ecclesia, meeting probably once in each prytany, or tenth of a year, was composed, theoretically, of all the citizens, including those newly admitted. It now enjoyed far greater freedom of action than formerly, owing, first, to the equalization of ranks within the citizen body, secondly, to the abeyance of the inhibitory power of the Areopagus, and thirdly, to the practical annulment of the Solonian law, forbidding legislation for a hundred years. Although no constitutional restriction of membership existed, it was virtually composed, in the main, of well-to-do citizens dwelling in Athens and vicinity. From the earliest times the people of Attica had lived in villages, the synoecism gathering into the capital the noble and wealthy, leaving the peasant and artisan class, for the most part, untouched. In the factional times, beginning in the pre-Draconian period and lasting till the usurpation of Peisistratus, there must have been a gathering of the poor into the city, so far as these enjoyed liberty of movement. The emancipation of clients, without any provision for their comfort, fostered this tendency, to the personal advantage of any demagogue who might bid for their support. But Peisistratus, statesman, as well as demagogue, checked this ochlocratic tendency by salutary laws, and especially by his rural policy; and thus restored

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edition) III. pp. 357-358; Cox, *Greek Statesmen*, I. pp. 65-66; Gilbert, *op. cit.*, I. pp. 144, 251 ff. and in *Philologus*, XXXIX. p. 131 ff.; Meier und Schömann, *Attische Process* (Lipsius), pp. 133-142; Busolt in *Müller's Hdb.*, \*IV. pp. 159, 248 ff.; *Griechische Geschichte*, I. p. 617 ff.; Thumser, *Die griech. Staatsalterthümer*, p. 478 ff.; Headlam, *Election by Lot at Athens*, p. 41 ff.

country life to more than its former vigor and prosperity. Hence on the restoration of the constitution, Attica was divided, for the most part, into small estates tilled by their proprietors, who loved the country, and held aloof from city noise and city politics. There was no pauper class living on the government purse, or on the price of their votes. Thus, only men of wealth and leisure, men interested, therefore, in the stability of the government, took part regularly in the *Ecclesia* and courts. This is the kind of democracy which Aristotle pronounces first and best. "A democracy (of this sort) may be framed where the majority live by tillage or pasturage; for, as their property is but small, they have no leisure perpetually to hold public assemblies, but are continually employed in following their own business, not having otherwise the means of living; nor are they desirous of what another enjoys, but prefer to follow their own business rather than meddle with state affairs, and accept offices which will be attended with no great profit. For the greater part of mankind are desirous of riches rather than honor. . . . Besides, their right of electing magistrates, and calling them to account, will satisfy them, if they feel any desire of honors."<sup>1</sup> The work of the *Ecclesia* was mainly legislative. Business of ordinary importance was generally dispatched by the senate in the name of the popular assembly, while the latter body had not yet a thought of intruding in the province of archon or other magistrate, but kept itself modestly within that sphere of activity belonging by nature to the sovereignty of the people.<sup>2</sup>

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<sup>1</sup> Arist., *Politics*, VI. 4 (p. 1318 b, 10 ff.).

<sup>2</sup> Authorities on the *Ecclesia*: Schömann, *Assemblies of the Athenians*, I. chs. I.-III., VI.; *Griechische Alterthümer*, <sup>3</sup>I., pp. 402-425; Grote, *History of Greece*, ch. XXXI., (small edition) II. pp. 78-9, (large edition) III. pp. 358-360; Hermann, *Political Antiquities of Greece*, pp. 252-264; Freeman, *Historical Essays*, *second series*, p. 128; Hartel, *Studien über attisches Staatsrecht und Urkundwesen*; Gilbert, *op. cit.*, I. p. 268 ff.; W. Vischer, *Kleine Schriften*, I. p. 402 ff.; O. Müller, *De decretis atticis quaestiones epigraphicae*; Busolt in *Müller's Hdb.*, <sup>2</sup>IV. p. 257 ff.; Thumser, *Die griech. Staatsalterthümer*, p. 504 ff.

The *Dicasteria* continued to exercise the *euthyna* of magistrates, and to receive appeals from their judicial decisions.<sup>1</sup>

The nine archons continued as the chief executive magistrates of the nation. They were now chosen by election and seem to have possessed the same powers and functions as under the Solonian constitution, subject to the Senate of 500 instead of the Areopagus. The ten generals were not instituted till the archonship of Hermoucreon, supposed by Kenyon to belong to the year 501 B.C.<sup>2</sup> They were then elected by tribes — *κατὰ φυλὰς* — one from each tribe and were subordinate to the Polemarch, who remained commander-in-chief of the army till after the battle of Marathon. As the *Zeugitae* were still excluded from the archonship, so the office of general must have been filled only by men of wealth.

The remaining subject of interest connected with the Cleisthenean system is ostracism. It was devised for the protection of the constitution against the friends of the tyrants, who must have formed a numerous and powerful party. Their leader was Hipparchus, son of Charmus, a kinsman of the Peisistratidae. Cleisthenes' immediate object in introducing ostracism was to expel this man because of his dangerous enmity to the government. But no open act of hostility on his part occurred which would warrant the application of the measure; and the *demus* with its accustomed leniency allowed all those partisans of the tyrants who were disposed to keep the peace to remain quietly in the city. The return of Hippias with a Persian army must have awakened them to a sense of danger, especially when they discovered that there were men within Athens ready to betray their

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<sup>1</sup> Authorities on the *Dicasteria*: Grote, History of Greece, chs. XXXI., XLVI., (small edition) II. pp. 79 ff., 440 ff., (large edition) III. pp. 359 ff., IV. pp. 456-486; Meier und Schömann, Der attische Process (ed. Lipsius); M. Fränkel, Die attischen Geschworengerichte; Cox, Greek Statesmen, I. p. 66; Gilbert, *op. cit.*, I. p. 357 ff.; Busolt in Müller's Hdb., <sup>2</sup>IV. p. 267 ff.; Thumser, *op. cit.*, p. 538 ff.

<sup>2</sup> Arist., Ath. Pol., ch. 22.



country to the barbarians, if only the tyrant might regain his power. Even then no immediate steps were taken to punish the traitors, probably because the Athenians were satisfied with their unexpected success and anticipated no further danger from Hippias or the Persians. But when they learned two years later that another, more formidable invasion of the barbarians was impending, they proceeded to secure themselves against domestic foes by the ostracism of Hipparchus.<sup>1</sup> Other friends of Hippias shared the same fate, among whom was Megacles, son of Hippocrates and nephew of Cleisthenes. Megacles' political conduct may have been the result of private or family differences; since we should expect the Alcmaeonidae to adhere on principle to the government founded by their great kinsman. Something unaccountable must, at any rate, have happened to effect a reconciliation and alliance between these hereditary foes. A hint has been thrown out elsewhere of an understanding between Hippias and certain Alcmaeonidae at the time of the battle of Marathon whereby the latter were to betray the city to him. The ostracism of Hipparchus took place in 488; of Megacles in 487, in the archonship of Telesines. In the following year, the measure was diverted from its original purpose and applied to purely political objects. Xanthippus, father of Pericles, was the first to suffer under the new departure. Other instances of its application will be mentioned as they occur. For the present, we have followed the history of ostracism far enough for the understanding of its character. Stated abstractly, the purpose of ostracism is *to supply the lack of a constitutional morality, i.e., respect for constitutional forms*. It is similar then in its design, to the sedition law of Solon; but far more potent in its effect. The man who is too great to obey the laws is sent into honorable exile; and the constitution saved thus from overthrow. When respect for the government as such was lacking, when no standing army or well-regulated police existed,

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<sup>1</sup> Kenyon, Aristotle on the Constitution of Athens, p. 58, n.

when the constitution, still untried, had so many powerful enemies at home and abroad, at that time ostracism was certainly a wise and wholesome institution. But, it may be urged, we have the evidence of Aristotle for the fact that it was soon diverted to merely political objects. This is true in a certain sense, but it is going too far to assume that its employment thereby became unwholesome. On the contrary, it is this very use of the measure which has been successfully vindicated by Grote, who shows that it continued to be employed against men who threatened the government by their power and influence, and who, consciously or unconsciously, were moving thus in the direction of tyranny. Its principle had not changed, though it was no longer employed against the avowed or suspected friends of a particular tyrant, *e.g.*, Hippias. Lugebil has added to Grote's theory the statement that there is something analogous in the application of ostracism to the modern change of ministry, as in England. He has noticed that *ostracophory* (vote of ostracism) never took place—after the change in its employment—except when two political antagonists at the head of their respective parties were engaged in keenest strife for the mastery. The *ostracophory* decided which was the stronger party and compelled the head of the weaker to go into exile. But Lugebil supposes, in opposition to Grote, that the victor, being really the more influential man stood nearer to the tyranny than the vanquished, and much nearer after he had gotten rid of his opponent than before, that, in a word, ostracism paved the way to tyranny. According to this reasoning, the original object of ostracism was exactly reversed when it came to be used as a political instrument. But he is wrong. The essential feature of ostracism is of course not the voting but the retirement from the country. Let us suppose then that it has been ascertained which is the more and which the less influential man in the state, and that it is nevertheless unnecessary for the weaker antagonist to go into exile. Which in that case is the more dangerous man? Not the more influential; for he is already at the head of the

government, having received a vote of confidence from the people. There is no danger that he will violate the constitution and aim at the tyranny so long as he is undisturbed by his defeated opponent. But the latter, having no respect for constitutional forms, will concentrate his resources, make secret preparations, and at an unexpected moment drive his more popular antagonist from the government, and himself seize the power. Thus Grote is right. Ostracism existed from the first almost to the last for the security of the constitution against tyranny. Its object, stated in more definite language than that of Grote was *to enforce submission to the rule of the majority*, such extraordinary means being required in the absence of constitutional morality. This defect in the public character of the Greeks has been discussed in its relation to the sedition law. Cleisthenes, improving upon that strange device of Solon, recommended ostracism as a preventive of civil war. The great reforms which he introduced inspired the mass of people with love for the government, and led them gradually to a comparatively high degree of constitutional morality. But while the work of education was going on, the young constitution must be protected against the assaults of oligarchic chiefs, who were opposed to the new state of things, and against the more dangerous attacks of demagogues, who by holding forth to the people hopes of further innovation sought thus to win popularity with a view to making themselves despots. Connections of the Peisistratidae, as Lugebil observes, must have been in the main of the latter class. Ostracism substituted voting for civil strife and thus freed the state of dangerous men. It would be a mistake, however, to suppose that this institution actually compelled adherence to conservative political principles. For it often happened that the upholder of existing political institutions, *i. e.*, the conservative, proved the weaker party and was forced into banishment, thus leaving the innovator to pursue his course unchecked. Certainly, Cimon, and Thucydides, son of Melesias, were defenders of existing constitu-

tional forms, against the innovations of Pericles. But in the absence of respect for forms, ostracism prevented civil strife by enforcing obedience to the decision of the majority, as has been said above. The cause of its disuse after about ninety years of operation, has not been discussed by Grote with equal success. An institution is not abandoned simply because it has once been abused, as in the ostracism of Hyperbolus. On the contrary, one case of abuse acts as a precedent for further cases, and the evil spreads rather than ceases of its own accord. The Ecclesia could pass a vote of ostracism only when 6,000 (or more) members were present.<sup>1</sup> In the course of the Peloponnesian war it came about that the attendance could no longer be made to reach this number; and from that moment ostracism became impossible. It appears to have ceased at a time when there was no longer any use for it. Henceforth we find no individuals raised so far above their fellows as to be a menace to the state.<sup>2</sup>

Cleisthenes introduced into the constitution no new principle, but brought into far greater prominence the democratic elements already existing in it. This he did chiefly by equalizing the ranks, as above described, and by slighting the power of the Areopagus. The government was democratic, strictly speaking, only in potentiality. In its practical working it was a timocracy of the milder class, while the state was still a clan-state, and remained such through the whole period of its freedom. Yet the adoption of the Cleisthenean constitution, exhibiting greatly strengthened democratic tendencies, may be

<sup>1</sup> Plutarch, Aristeides, 7; Lugebil, *Jahrb. f. class. Philol.*, Supplb. IV. p. 146.

<sup>2</sup> Authorities on ostracism: Aristotle, *Ath. Pol.*, ch. 22; Grote, (small edition) I. p. 605; II. pp. 84-92; Schömann, *Assemblies of the Athenians*, pp. 234-9; *Antiquities of Greece*, pp. 181-3, 338, 385, 395-7; *Athenian Constitutional History*, pp. 85-6; Gilbert, *Hdb. d. griech. Staatsalter.*, I. pp. 144-6, 294-5; Müller's *Handbuch*, <sup>2</sup>IV. pp. 161-2, 261; Hermann, *Political Antiquities of Greece*, pp. 125 n. 13, 218, 219 n. 17, 257; Cox, *Greek Statesmen*, I. pp. 68-70; Lugebil, *Ueber das Wesen und die historische Bedeutung des Ostrakismos in Athen*, *Jahrb. f. die class. Philol.*, Supplb. IV. pp. 119-175; Curtius, *History of Greece*, I. p. 420.

justly regarded as the beginning of a new period,—the fifth in the history of the government. The yoke of the tyranny was broken, and the Solonian constitution, as lately modified and improved, became, for the first time, a living, political organism. This constitution, by conferring large benefits upon the people, and by opening to them new and attractive spheres of activity, inspired them with a patriotism hitherto unknown. A great tide of public enthusiasm and public energy, arising at this point, surged onward through the Persian wars, carrying the Athenians victoriously through those crises in the history of their country and the world, liberating the Ionic Greeks, founding a great maritime empire, gaining in height and strength, with each political advance, till it reached its climax in the marvelous activity of the Periclean age.<sup>1</sup>

It has already been stated that the archons were now elected, not taken by lot, and that the Polemarch was commander-in-chief of the army till after the battle of Marathon. The question as to who commanded the Athenians in this battle was of great interest before the discovery of Aristotle's *Politeia* of the Athenians. Lugebil<sup>2</sup> treated the question exhaustively, and arrived at the truth in confirmation of Grote's theory, and in opposition to Schömann. The archons were the chief magistrates of the nation till sometime after the Persian wars, though the efficiency of the office must have suffered a certain deterioration with the change in the mode of election. In 487 a return was made to the Solonian method

<sup>1</sup> Authorities on Cleisthenes : Grote, ch. XXXI., (small edition) II. p. 70 ff., (large edition) III. pp. 346-398 ; Curtius, *op. cit.*, I. pp. 397-431 ; Cox, *op. cit.*, I. pp. 59-71 ; Landwehr, *Zur ältern attischen Geschichte*, Philol., Supplb. V. pp. 158-169 ; Schömann, *Assemblies of the Athenians*, pp. 14-5, 234-9, 342-361 ; *Antiquities of Greece*, pp. 335-8 ; *Ath. Const. Hist.*, pp. 64-88 ; Hermann, *op. cit.*, pp. 215-221 ; Gilbert, *op. cit.*, I. pp. 141-6 ; Müller's *Handbuch*, <sup>2</sup>IV. pp. 158-162 ; Fustel de Coulanges, *Ancient City*, pp. 423-9 ; Philippi, *Beiträge zu einer Geschichte des att. Bürgerrechts*, pp. 147-181 ; Leist, *Graeco-italische Rechtsgeschichte*, p. 162 ; Lugebil, *Zur Geschichte der Staatsverfassung von Athen*, *Jahrbücher für classische Philologie*, Supplb. V. p. 680 ff. ; Droysen, *Die Strategen*, *Hermes*, IX. p. 1 ff. ; Holm, *Griechische Geschichte*, I. p. 503 ff. ; Thumser, *Die griech. Staatsalterthümer*, p. 395 ff.

<sup>2</sup> *Op. cit.*, p. 564 ff.

of filling this office,—the nine archons from that date were taken by lot from 100 (possibly 500) candidates elected by the tribes (or demes).<sup>1</sup> In closest dependence upon this change came the elevation of the ten generals in military authority, the chief command in war being about this time transferred to them from the Polemarch.

We come now to an event of vast significance in the history of the Athenian government. In the archonship of Nicodemus,<sup>2</sup> it was proposed to distribute among the citizens the revenues accruing to the state from silver mines in Maroneia.<sup>3</sup> Themistocles opposed this proposition and moved that the sum on hand, 100 talents, be loaned to the 100 wealthiest men of Athens, a talent to each. The use to which the money was to be put is not mentioned in the proposition as given by Aristotle or Polyænus,<sup>4</sup> and yet the people would hardly have acceded to the measure, had they no idea of its object. However that may be, it is simply stated that if the money should be employed in a manner acceptable to the people, the amount should be debited to the state. Otherwise, the fund should be repaid by its holders to the treasury. With this money, there were built 100 triremes at the cost of a talent each. The work was rapidly accomplished and in so excellent a manner as to satisfy a majority in the Ecclesia. But it did not pass without opposition on the part of conservative statesmen. Aristideus insisted upon laying the foundation of Athenian military power in the heavy-armed as most conducive to the stability of

<sup>1</sup> The number of candidates (τῶν προκριθέντων) as well as the persons, or bodies, by whom the nominations are made is uncertain. Aristotle, *Ath. Pol.*, ch. 8, speaking of the usage of his own times, mentions 100 candidates nominated by the tribes. In ch. 22 he mentions, on the contrary, 500 candidates nominated by the demes. Possibly, as Kenyon (2d ed., pp. 59–60) suggests, we should read 100 in place of 500; possibly Aristotle is confusing the election of archons with that of the *Boule* of 500, whose members were, indeed, elected by the demes; Arist., *op. cit.*, ch. 62; cf. Sandys' edition, p. 87.

<sup>2</sup> Probably in the year 483; Sandys, *Arist. Const. of Athens*, p. 88, n. on ἔτη τρία; cf. Dionysius Hal. VIII. 83, p. 1711 (Reiske).

<sup>3</sup> A new mine may have lately been discovered there; cf. Sandys, *op. cit.*, p. 89, n.

<sup>4</sup> *Strateg.* I. 30. 6.

private and public character, while he "regarded the navy as the seed-bed of novelty and change."<sup>1</sup> Athens, engaged at this time in a war with Aegina, was meeting with ill-success owing to her weakness by sea. But Themistocles must have looked beyond the present, to the defense of his country against a more formidable enemy, already far advanced in its preparations for overwhelming Europe with a flood of barbarians. Nor was his view most probably confined to this horizon, but included all the future greatness of Athens, her walls and Peiraeus, her hegemony and empire. For these were the results of his decree. Aristides was ostracised and an obstacle to the furtherance of the Themistoclean naval policy thus removed.<sup>2</sup> It was probably in the following year that Themistocles held the office of archon,<sup>3</sup> and began his great

<sup>1</sup> Cox, *Greeks and Persians*, pp. 153-4.

<sup>2</sup> Aristotle, *Ath. Pol.*, ch. 22, seems to accord with Plutarch in placing the ostracism of Aristides soon after the passage of Themistocles' naval decree. Aristides opposed the measure, and, after its passage, hindered its execution. This appears to be the reason for his ostracism; cf. Plutarch, *Themistocles*, 4 ff.; *Aristides*, 7.

<sup>3</sup> An interesting article by J. A. R. Munro on the "Chronology of Themistocles' career" has just appeared in the *Classical Review*, VI. pp. 333-4. Below are the main results of Munro's investigation.

There are two distinct systems of chronology for the career of Themistocles, according to which the same events are separated by an interval of ten years. In the following table A and B represent the two systems respectively:—

	A	B
(1) Themistocles' Archonship, . . . . .	493	483
(2) his ostracism, . . . . .	471	461
(3) his flight from Argos, . . . . .	467	(457?)
(4) his death, . . . . .	459	449.

The conflicting dates are in every case based upon the authority of ancient writers. This conflict probably arose from the fact that the Persian Wars were ten years apart, as were also the two expeditions to Egypt (459 and 449), in connection with the fact that Themistocles was 65 at his death, which was supposed to have occurred at the time of one or the other of these expeditions to Egypt. Munro makes another hardly less interesting discovery: Thucydides, I. 137, says that Themistocles found Artaxerxes *πρωστὶ βασιλεύοντι*. In IV. 50, the Athenian envoys found him *πρωστὶ τεθνηκότα*. "The interval cannot be more than four months"; *op. cit.*, p. 334. This proves that Thucydides is not always reliable in matters of chronology.

work of fortifying the Peiraeus. Strict adherence to forms was never a marked quality of the Athenians ; and I cannot help believing that they on this occasion resorted to the ballot for the purpose of placing in office the man most competent to execute the newly adopted measure. Thus the fortification of the Peiraeus was but a natural continuation of his naval policy. The building of triremes went on. Probably the first 100 were completed in the year after the adoption of the measure, *i. e.*, in 482, and the revenues from the mines for the years 482 and 481, amounting to 50 talents per year, applied to the same object. Thus the Athenians fought at Artemisium with 127 ships,<sup>1</sup> and soon after were reinforced by 53 additional ships,<sup>2</sup> which seem not to have been ready to sail with the main armament. These 180 ships of the Athenians were employed in the battle of Salamis, and twenty ships besides were lent to the Chalcidians. Thus the number of Athenian ships amounted at that date to 200.<sup>3</sup> The fear of the Persian invaders brought about a reconciliation of political opponents, the ostracised were recalled,<sup>4</sup> and all united in loyal service to their country in its supreme peril. At the same time, a regulation was adopted, fixing as a limit to the free movement of persons while in exile under ostracism, the points of Geraestus and Scyllaeum, *i. e.*, the southeast point of Euboea and the easternmost point of Argolis respectively.<sup>5</sup> Any infringement of this regulation was punishable with atimy.

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<sup>1</sup> Hdt. VIII. 1.

<sup>2</sup> Id. VIII. 14.

<sup>3</sup> Id. VIII. 44 ; cf. Landwehr, Philol., Supplb. V. p. 181.

<sup>4</sup> In the archonship of Hysichides, 480 B.C.

<sup>5</sup> Arist., Ath. Pol., ch. 22, l. 34 (Herwerden et Leeuwen), gives *ἐπὶ τὸν ἄκρον*, making the limit mentioned the *eastern*. Wyse has corrected this to *ἐκ τὸν ἄκρον*, thus defining the *western* rather than the eastern limit. The latter reading agrees with Philochorus in Lex. Rhet. Cantab., *ὁστρακισμοῦ τῶντος· μὴ ἐκβαλόντα ἐπὶ τὸν Γεραεστου*. It agrees also with the fact that before the fixing of this limit, Aristides while in exile lived in Aegina, inside the limit, while afterwards men under ostracism dwelt only outside the limit ; cf. Sandys, Arist. Const. of Athens, p. 91, n. on *ἐκ τὸν ἄκρον*.



## CHAPTER XII.

### FROM THE BATTLE OF SALAMIS TO THE BEGINNING OF THE PELOPONNESIAN WAR.

The sixth period of Athenian constitutional history begins with the restoration of the Areopagus to its former position of authority and influence in the state. This took place not through any public measure but in an altogether informal way, owing to the fact that it was the cause of the battle of Salamis being fought. For the ten generals who were beginning to supersede the archons in the administration, losing all hope of saving the state and people by any regular means, issued a proclamation bidding everyone rescue himself as best he could. At this crisis, the *Boule* of the Areopagus came forward and furnished each man with eight drachmas in money, conveying all with their families and movable property by ship to places of safety.<sup>1</sup> Thus the Areopagus, through its energy and practical wisdom exhibited at this crisis, regained its former dignity and authority; and for seventeen years managed the government in a wise and efficient manner.<sup>2</sup>

Immediately after the departure of the Persians the Athenians returned to Athens with their wives, children, and property, and set to work rebuilding the city and the walls. Of the old line of wall only a small part was left standing. Most of the houses

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<sup>1</sup> Aristotle, *Ath. Pol.*, ch. 23, quoted also in Plutarch's *Themistocles*.

<sup>2</sup> "A government may be changed either into an oligarchy, a democracy, or a constitutional government, when the magistrates, or any one part of the city, acquire great credit, or increase in power; as the senate of the Areopagus at Athens, which, having procured great credit during the Persian war, added firmness to the administration; and, on the other hand, the maritime force, having gained the victory at Salamis, by their power at sea, got the lead of the state, and strengthened the popular party"; Aristotle, *Politics*, VIII. (V.) 4 (p. 1304 a, 17 ff.); cf. Isocrates, VII. 51.

were in ruins, a few only remaining in which the chief men of the Persians had lodged.<sup>1</sup> The Spartans opposed the rebuilding of the walls, but were outwitted by Themistocles aided by Aristides.<sup>2</sup> The former had, while archon, begun the work of fortifying the Peiraeus<sup>3</sup> in accordance with his vigorous naval policy, and it must have been with feelings of the greatest pleasure and satisfaction that he could at last look upon his finished work. He it was who had made Athens great. The independence of the Athenians, their "weight and worth" in the common council of the Greeks were secure behind the Themistoclean bulwarks. His masterpiece of skill brought upon him the enmity of his former friends and admirers, the Spartans,<sup>4</sup> together with their oligarchic sympathizers at Athens. Although Aristotle mentions him as the Athenian counsellor in war during these times, we know of but one or two special cases where his advice was offered. All our other information would lead us to believe that his influence henceforth declined. The fortification of Athens and Peiraeus was brought about in 479-478 B.C. Themistocles was ostracised, according to the generally accepted chronology based upon Thucydides, in 471.<sup>5</sup> With the decline of Themistocles, Aristides came into greater prominence. He had been a friend of Cleisthenes and a supporter of his constitution.<sup>6</sup> Accordingly, we found him, before Xerxes' invasion, the advocate of conservative principles, in active rivalry with Themistocles, his younger contemporary;<sup>7</sup> and it was probably his opposition to the Themistoclean naval policy which brought about his ostracism.<sup>8</sup> After his restoration, his rivalry with Themistocles continued; but it was now a

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<sup>1</sup> Thucydides, I. 89.

<sup>2</sup> Id. I. 90-92.

<sup>3</sup> Id. I. 93.

<sup>4</sup> Id. I. 74, 91, 135.

<sup>5</sup> See Morris, Thucydides, p. 331. For the foreign policy of Themistocles, cf. Holm, *Griech. Gesch.*, II. pp. 111-112, 138-139, notes 11 and 12.

<sup>6</sup> Plutarch, Aristides, 2.

<sup>7</sup> Morris in *American Journal of Philology*, VII. p. 329.

<sup>8</sup> Cox, *Greek Statesmen*, I. p. 118 f.

rivalry for the leadership of the popular party.<sup>1</sup> He had been converted by the lessons of war to a strong democratic policy. Plutarch says that on his return from the battle of Plataea, Aristides, considering that the people deserved some attention and respect because of their gallant behavior in battle, and that it would be difficult to keep men elated with victory from an equal participation in the government, carried a decree admitting all to a share in the government, and opening the archonship to the whole body of Athenians.<sup>2</sup> According to Aristotle, however, the *Zeugitae* were not admitted to the archonship till 457, and the *Thetes* were never legally eligible.<sup>3</sup> Plutarch has, therefore, failed to understand the true nature of the decree. Gilbert,<sup>4</sup> following Schömann, observed that the poorest citizens could not have actually occupied the archonship at this time, because it was an unpaid office and one which involved considerable expenditure. He conjectured, therefore, that the principal change wrought by Aristides in this decree was the obliteration of the distinction between real estate and moveable property. Henceforth all Athenians were eligible who could bear the expense. Under the new light from Aristotle, we are obliged to accept this view. No discrimination as to kind of property could have obtained in the military sphere during the Persian Wars; consequently, no such discrimination could be maintained henceforth in the political sphere. We have, on the other hand, sufficient evidence that the battle of Salamis marks the beginning of a new epoch in the history of the *Thetes*.

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<sup>1</sup> Arist., Ath. Pol., ch. 23.

<sup>2</sup> Plutarch, Aristides, 22. Demetrius Phal. informs us (Plut., *op. cit.*, 1) that Aristides was chosen archon from the highest property class, and places his archonship after the battle of Plataea, i. e., in 478; cf. Sandys, Arist. Const. of Athens, p. 87. But (1) it is doubtful whether Aristides was wealthy enough to belong to the *Pentacosiomedimni*, and (2) it is known that he was archon in 489 instead of 478. It is impossible, therefore, from the data furnished by Demetrius, to determine with any degree of certainty the time when the *Hippeis* became eligible to the archonship. Demetrius would place the event in or after 478.

<sup>3</sup> Arist., Ath. Pol., ch. 26.

<sup>4</sup> Gilbert, Hdb. d. griech. Staatsalter., I. p. 146 and n. 1.

The oligarchy had in many states of Greece, also most likely in Athens, depended mainly upon the *Hippeis* for support. From these, therefore, the rulers of the city were chosen. By reviving the Ecclesia, Draco restored the *politeia* to the heavy-armed. Now that the *Thetes* had gained the victory at Salamis and had served well as light-armed troops on land, they began to take a bolder stand in politics, and to exercise a greater and greater influence upon the administration.<sup>1</sup> For the present, however, the government remained timocratic. Plutarch places Aristides' constitutional measure after the return of the Athenians from Plataea, *i.e.* in 479 B.C. In the same year, he abetted the trick of Themistocles for the building of the walls in defiance of the Lacedaemonians, and soon after, with Cimon as colleague, took command of the thirty Athenian ships sent out with the fleet of Pausanias to the seat of war. The disgraceful conduct of the Spartan commander at Byzantium gave the Athenians the opportunity of taking under their protection the liberated Ionians.<sup>2</sup> They now possessed the most powerful fleet of all the Hellenic cities. They had gained experience in war; their fame filled Greece; they were enterprising, energetic, ready to take advantage of circumstances. The allies offered them the hegemony; and Aristides accepted it in the name of the Athenians, the Lacedaemonians voluntarily yielding it to them.<sup>3</sup> This success was largely due to the excellent personal qualities of Aristides. "He insensibly drew the chief command from the Lacedaemonians, not by force of arms, horse, or ship, but by his gentle, obliging deport-

<sup>1</sup> Aristotle, *Politics*, VIII. (V.) 4 (p. 1304 a, 22 ff.).

<sup>2</sup> Thucydides, I. 95-6; Plutarch, *Aristides*, 23.

<sup>3</sup> This seems to be the proper reading of *Arist.*, *Ath. Pol.*, ch. 23, l. 40, (ed. H. et L.), *i. e.*, ἐκόντων τῶν Λακεδαιμονίων, and is re-inforced by *Plut.*, *loc. cit.*: "And here the magnanimity of the Lacedaemonians was wonderful. For when they perceived that their generals were becoming corrupted by the greatness of their authority, they voluntarily laid down the chief command, and left off sending any more of them to the wars, choosing rather to have citizens of moderation and consistent in the observance of their customs, than to possess the dominion of all Greece." Sandy's reasoning (*op. cit.*, p. 93) appears weak.

ment.”<sup>1</sup> In 478, he fixed the annual contributions of the allied cities and, in the name of Athens exchanged with them the oath of aggressive and defensive alliance, at the same time sinking red-hot pieces of iron into the sea and uttering execrations on those who should break the articles of treaty.<sup>2</sup> The object of the league was defence against the Persians and compensation for previous losses by ravaging the king’s country.<sup>3</sup> For the support of the league it was necessary for the larger cities of the allies to furnish ships with their crews ; from the smaller, a certain money contribution was required. The allies were perfectly satisfied with the assessment of Aristeides, and because of the lightness of their burden imagined that the golden age had come.<sup>4</sup> The sum of the annual contributions was 460 talents, reached probably after the battle of Eury-medon, at which time several cities had been added to the league. Deputies from all the cities met periodically in a synod in the temple of the Delian Apollo, under the presidency of Athens.<sup>5</sup> Here the common interests of the confederacy were considered. Athens had also from the beginning control of the finances, the treasury being managed by magistrates called *Hellenotamiae* (Hellenic Treasurers), — an office now instituted and filled only by Athenians,<sup>6</sup> though the treasury remained for some time in Delos. It is not intended here to present in detail the constitution of the Delian Confederacy. Enough merely is given for understanding the purposes of the league and the relations of Athens to it. A new phase of Greek politics now appeared. An attempt was made to widen the narrow circle of city politics and city prejudices, and to establish a federal union, or, if that were impossible, an empire. The

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<sup>1</sup> Plutarch, Aristeides, 23.

<sup>2</sup> Aristotle, Ath. Pol., chf. 23.

<sup>3</sup> Thucydides, I. 96.

<sup>4</sup> Plutarch, Aristeides, 24.

<sup>5</sup> Thucydides, I. 97.

<sup>6</sup> Id. I. 96. See on the constitution and object of the confederacy, Holm, Griech. Geschichte, II. pp. 115, 157, 268, n. 15.

influence of these new conditions upon Athens will be noticed as occasion requires.

During this period there was a steady development of democratic principles. The history of the period centers about the Areopagus, on the one hand, and the Senate of 500, the Ecclesia, and the popular courts on the other. These democratic institutions rose with the decline of the aristocratic *Boule*. It was Aristides who counselled the Athenians to gather from their fields into the city, that they might secure to themselves the rule of the sea and the more complete control over their allies.<sup>1</sup> He told them that they could support themselves by public service, military and administrative. They obeyed accordingly, flocked to the city in great numbers, began to live more and more upon the public purse, and, in a brief time, converted the hegemony into an empire. Only the Chians, Lesbians, and Samians were allowed to retain their constitutions, that they might, in return for assured freedom, aid in maintaining the empire. Undoubtedly Athens was forced to this policy by the character of the Ionians, their indisposition to long-continued personal military service, and their desire to shake off the burden of taxation, when once the danger from the Persians had been removed from their doors.<sup>2</sup> In 466 Naxos revolted, but was reduced by siege and deprived of its autonomy by the Athenians. Soon after, the example set by Naxos was followed by Thasos. The Thasians were encouraged in their revolt by the Spartans, who, however, failed to give the promised aid because of troubles at home. Thasos fell, apparently in 463, after a siege of two years. The triumph of Athens over her revolted allies gave power to the democracy. The people became bolder in politics every day. Cimon, who in opposition to Themistocles, had sought with some success to restrain them, found them now, on his return from Thasos,

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<sup>1</sup> Aristotle, *Ath. Pol.*, ch. 24.

<sup>2</sup> Thuc. I. 99; Cox, *Athenian Empire*, pp. 3-7, 28-9; Holm, *Griech. Geschichte*, II. p. 115.

beyond his control, and, under the leadership of Ephialtes, seeking to remove from the constitution all its aristocratic elements. In his *euthyna* as general, he was accused of misconduct in the war by Pericles and others; but was, according to Plutarch,<sup>1</sup> acquitted, and regained for a season his influence in the state. In 462 the Lacedaemonians, who were besieging without effect the revolted Helots in Ithome, requested aid of the Athenians. Ephialtes, leader of the popular party, opposed the resolution to send help, advising the Athenians to "let the pride and arrogance of Sparta be trodden under." But the influence of Cimon prevailed, and he led a considerable force to Ithome. It now seems most probable that the overthrow of the Areopagus occurred during the absence of Cimon on this expedition.<sup>2</sup> The leader in the attack, as all

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<sup>1</sup> Cimon, 14. But Demosthenes, XXIII. 205, says that he narrowly escaped death, and incurred a fine of 50 talents.

<sup>2</sup> The date for the fall of the Areopagus has generally been assigned approximately to the year 460, *i.e.*, two years later than that given by Aristotle, *Ath. Pol.*, ch. 25. The expedition of Cimon to Ithome has been placed earlier than this event by some historians, as Curtius, *History of Greece*, II. p. 417 ff.; later, by Lloyd, *Age of Pericles*, I. p. 382 ff.; coincident, by Wachsmuth, *The Historical Antiquities of Greece*, II. p. 72 ff. Now that the date for the overthrow of the Areopagus (462) has been ascertained, it has become possible to fix with greater precision the expedition of Cimon. He was prosecuted in 463. He was on some expedition when the Areopagus fell. He could not have had time between 463 and 462 to have returned from this expedition in season to take part in the debate on the resolution to send help to Sparta, and to lead the Athenian force, still in 462, to the siege of Ithome. On the other hand, he must have led this force in 462, for Ephialtes was assassinated in that year (Aristotle, *Ath. Pol.*, chs. 25-6, Kenyon), and Plutarch says that Ephialtes opposed the resolution. Yet it may be urged that though the resolution was taken in 462, the aid might have been delayed till the next year, and thus the sending of aid might have followed the fall of the Areopagus. This objection is to be met as follows: Plutarch tells us that Cimon, returning from a certain military expedition and finding the Areopagus fallen, endeavored to restore it and to re-establish the aristocracy of the time of Cleisthenes; but his efforts were fruitless. His opponents raised against him a storm of indignation, and he was met with taunts of laxity in private life and over-fondness for Sparta. Under such conditions, it was impossible that he should immediately prevail upon the Athenians to put him in command of a powerful force to be led even the next year to the relief of Sparta. Plutarch's description of Cimon's reception can refer only to his return from

authorities agree, was Ephialtes, who had opposed sending aid to Sparta,—a man reputed for justice and incorruptibility in public life, the peer of Aristides and Cimon, poor but generous, a good citizen and an upright statesman.<sup>1</sup> He had once served as a general,<sup>2</sup> but was now devoting his whole energy to the work of political reform. Full of the spirit of Themistocles, he was seeking to obliterate, in government and society, all distinction between Eupatrid and Plebeian, between rich and poor,—to assure to every free Athenian, however humble in means, the largest life and the utmost liberty of action commensurate with the security of the republic. This brought him into collision with the Spartan policy of cramping the faculties of the individual,—a policy represented in Athens by the Areopagus.<sup>3</sup> His opposition to Sparta was not grounded upon the base desire to make Athens great at the expense of her sister states. Rather it was the feeling that the oligarchs, wherever found, were alike hostile to his larger plans for the education and elevation of the Athenian masses. Although the complicity of the Spartans in the revolt of Thasos was not yet known, the keen-sighted democratic leader must have observed that the oligarchs in Sparta were of one stamp with the oligarchs in Thasos, and that everywhere their party was the most formidable obstacle to Athenian naval supremacy. If then Sparta, the stronghold of oligarchy, should be weakened, would it not weaken correspondingly the forces of treason and rebellion within the empire? Ephialtes was justified by the divulgence of Sparta's treasonable agreement with the Thasians and still

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Ithome after the contemptuous dismissal of the Athenians and the divulgence of Sparta's treachery to Athens in the case of the Thasians. The result of this whole argument is that Cimon made but one expedition to aid the Spartans, and while on that expedition the Areopagus fell. On his return he attempted to restore it, but was ostracised as a favorer of the Lacedaemonians, who had proved themselves false friends to Athens.

<sup>1</sup> Aristotle, *Ath. Pol.*, ch. 25; Aelian, *V. H.*, II. 43; Heracl. Pont., I.

<sup>2</sup> Plutarch, *Cimon*, 13.

<sup>3</sup> Cox, *Greek Statesmen*, II. pp. 4-5.



more by the events of the next half-century. The Areopagus, in pursuing a conservative policy, had favored alliance with Sparta and had thus made itself obnoxious to the democrats. Furthermore, it no longer enjoyed its ancient reputation for honor and wisdom. Ephialtes began his attack on that body by procuring the condemnation of several of its members on the charge of mal-administration; and finally carried a decree transferring all its powers of governmental supervision, and most of its judicial functions, to the senate of 500, the *Ecclesia*, and the courts.<sup>1</sup> Ephialtes was supported by Pericles, who was already known to entertain democratic sentiments, but who had not yet appeared openly as leader of the people.<sup>2</sup> The oligarchs, enraged at Ephialtes for what he had done and unable to impeach his character, caused him to be assassinated, according to Aristotle, in the year 462.<sup>1</sup> Cimon, on his return,

<sup>1</sup> Arist., *Ath. Pol.*, ch. 25; Plutarch, *Cimon*, 15. Plutarch tells us that on this occasion "the multitude broke loose and overthrew all the ancient laws and customs they had hitherto observed."

<sup>2</sup> That Pericles had a hand in robbing the Areopagus of its important functions is shown by Aristotle, *Politics*, II. 12 (p. 1274 a, 7 f.); *Ath. Pol.*, ch. 27; Plutarch, *Cimon*, 15. Plutarch says that Pericles was already powerful; yet, according to Aristotle, *Ath. Pol.*, ch. 27, he did not appear as leader of the *demus* till a later date. The story of Themistocles' part in the overthrow of the Areopagus is probably false, since he was ostracised before the siege of Naxos in 465 (a date on which we may confidently rely) and no hint is given of his ever returning from exile. It is thought best to give the story as told by Aristotle, *Ath. Pol.*, ch. 25. A party to this plot was Themistocles, who was a member of the Areopagus and was expecting trial before its court on a charge of Medism. Wishing to avoid this danger by the destruction of that body, he one day told Ephialtes that the Areopagus was about to arrest the latter; then, on the other hand, promised the Areopagus to point out to them certain persons who were conspiring for the overthrow of the constitution. Messengers were accordingly dispatched by the Areopagus, and were conducted by Themistocles to the place where he knew he should find Ephialtes. While approaching the spot, Themistocles conversed loudly with the deputies, that Ephialtes might overhear and learn the purport of the visit. The latter in alarm escaped to a sanctuary. This event created the greatest excitement. The *Boule* of 500 assembled, and Ephialtes and Themistocles appearing before it, inveighed against the Areopagus, repeating their charges before the *Ecclesia* with such force and persistence that they finally gained their object. Thus the *Boule* of the Areopagus was shorn of all its power of governmental supervision. Cf. Sandys, *Arist. Const. of Athens*, pp. 101-3, n. on § 3.

endeavored to roll back the rising tide of democracy and to restore the Areopagus to its former dignity and authority. But the insult Athens had received from Sparta, the treacherous connections of Sparta with the rebellious allies of Athens, now came to light, and the murder of the people's champion made the multitude furious. The weak points in Cimon's private life were discovered and exaggerated, his fondness for Sparta was turned to his disadvantage, and he was exiled by a vote of ostracism probably in 461.<sup>2</sup> The leader of the popular party in this movement was Pericles.<sup>3</sup> It was probably under his guidance also that the Athenians threw off the hegemony of Sparta and forthwith entered into alliance with the Argives, Thessalians, and soon after with the Megarians. It now appeared that Athens was to become the head of as great a confederacy as that of Sparta. This seemed to affect her attitude toward the maritime allies.

The change from hegemony to empire was completed in 460-58,<sup>4</sup> with the transfer of the confederate treasury, amounting to 1,800 talents, from Delos to Athens, where it was deposited in the temple of Athena. These funds were to be used in the construction and manning of triremes for the defense of the allies and the prosecution of war with the Medes, and in the erection of public buildings at Athens

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<sup>1</sup> Ath. Pol., ch. 26 (Kenyon). Cf. Plutarch, Pericles, 10; Diod. XI. 77. 6; Antiph. V. 68. The fact that the oligarchs vented their rage upon Ephialtes confirms the view that he, not Pericles, was the leader in the attack. Again, on the return of Cimon, Ephialtes' name had disappeared,—the contest was between Pericles and Cimon. It was Pericles, not Ephialtes, who sent Cimon into exile. All these facts tend to corroborate the testimony of Aristotle as to the date of Ephialtes' assassination.

<sup>2</sup> That Cimon was banished while the people were still excited over the dismissal of the Athenians from Ithome appears from Plutarch, Cimon, 17; cf. 15.

<sup>3</sup> Plutarch, Cimon, 17; Pericles, 9.

<sup>4</sup> This event has been placed as late as 454; Gilbert, *Hdb. d. griech. Staatsalter.*, I. p. 391 and n. 3 with references. The evidence offered for this, however, is insufficient. On the other hand, it seems likely that the removal of the treasury should precede the construction of the long walls, the improvements within the city, and the introduction of the dicastic stipend.

designed for the use of the confederacy. Undoubtedly they were soon diverted from their original object, and employed by Athens for private purposes without discrimination.<sup>1</sup> By the fall of the Areopagus, the Ecclesia was left with hardly a check upon its action. Although it must adhere in its deliberations to the program presented by the *Boule* of 500, it could practically compel the *Boule* to subserve its pleasure in the selection of subjects for debate. Now that the inhibitory power of the Areopagus<sup>2</sup> was removed, there was great danger that the Ecclesia would drift into anarchy. But Pericles found a sufficient safe-guard in two institutions which he introduced about this time.<sup>3</sup> The first of these was the *γραφὴ παρανόμων* or writ against an unconstitutional measure. According to this, any member of the Ecclesia could stop deliberation on any subject by declaring under oath that he wished to try the constitutionality of the proposed law or decree before a Heliastic court. The unconstitutionality might lie in either form or matter, and the charge could be brought within the limit of a year after the adoption of the measure. Beyond this time the measure might be impugned, but not the proposer. When the measure alone was assailed, it was defended by five advocates chosen to represent the people.<sup>4</sup> The proposer, if convicted, must pay a heavy fine, or even lose his franchise, or, in some cases, his life. On the other hand, the prosecutor who failed to obtain a sixth part of the votes was fined a thousand drachmas and disqualified from bringing further accusations.<sup>4</sup> The original object of the *γραφὴ παρανόμων* was

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<sup>1</sup> Athens was fulfilling her duties toward the allies in defending them from the Persians. Her citizens were obliged to neglect private interests and the occupations of peace for the sake of securing the allies against danger. Some compensation seemed due her for such service.

<sup>2</sup> These measures were unnecessary before the fall of the Areopagus. On the other hand, they could not have operated efficiently before the introduction of the dicastic stipend. They belong, therefore, to the years immediately following the overthrow of the Areopagus.

<sup>3</sup> Hermann, *Political Antiquities of Greece*, p. 261.

<sup>4</sup> Schömann, *Assemblies of the Athenians*, p. 163.

the protection of the fundamental principles of the constitution against innovation. It promoted consistency also in the code, since a new law would rarely be proposed, through fear of the writ, without the repeal of the old law which the new was to supplant. Of like nature was the institution of the *Nomothetae*, dating from about this time. The *Nomothetae* were a body of sworn jurors chosen from the Heliasts and varying in number according to the importance of their duties.<sup>1</sup> Once a year the laws (*νόμοι*) were revised in the Ecclesia, at which time any citizen could, with the consent of the *Boule*, propose the adoption of a new law and the repeal of the corresponding old law. After due public notice, this proposition came before the *Nomothetae* in their annual session. Although the *Nomothetae* had the organization of a parliament, the *procédurè* was that of a trial. Public advocates, with the help of volunteers, defended the old law, while the proposer of the new measure, also aided by volunteers, undertook the task of prosecution. A majority vote decided; and the measure if adopted became a law, no report being made to the Ecclesia.<sup>2</sup> It is to be noticed that proposals for change of *νόμοι* could be made but once a year, and that the procedure was slow and well guarded. The chief law-making power, thus lay in the hands, not of the assembly, but of the law courts,—the Heliasts had taken the place of the Areopagus in the control of the legislation.

Several years may have passed after the fall of the Areopagus before these two institutions came into efficient operation. They involved the regular and frequent sessions of large bodies of men on business, which had no direct interest for themselves, and which they would be unwilling, therefore, to perform gratuitously. The full development of the Athenian

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<sup>1</sup> The numbers 500 and 1001 are authenticated; Andoc. de Myst., 84; Dem. XXIV. 27.

<sup>2</sup> On the *Nomothetae*, see Gilbert, Hdb. d. griech. Staatsalter., I. p. 285 ff.; Müller's Hdb., <sup>2</sup>IV. pp. 264-6; Schömann, Animadversiones de Nomothetis; Assemblies of the Athenians, pp. 239-268. For further references, see Thumser, Die griech. Staatsalterthümer, p. 525.

law courts was reached when Pericles introduced the dicastic stipend, probably between the years 457 and 451.<sup>1</sup> Before considering this innovation in detail, it is thought best to record the events that had happened in the meantime. The acquisition of the Delian fund enabled the Athenians not only to undertake several important military enterprises abroad, but also to plan, under the guidance of Pericles,<sup>2</sup> extensive improvements within the city, and to begin the construction, in 458, of the long walls from Athens to the Peiraeus and Phalerum. This was the legitimate consequence of the Themistoclean naval policy. Themistocles proposed to establish the Athenian naval supremacy by bringing Athens to the sea;<sup>3</sup> but since the Athenians could not be persuaded to leave the city, whose ground was sacred because of religious associations, Pericles, by the erection of these walls, brought the sea to the gates of Athens.<sup>4</sup> Henceforth, the city could not be blockaded so long as her fleet held the sea. That this movement was democratic is shown by the treasonable attempt of the oligarchs to prevent it. At this time there was a large army of Lacedaemonians in Boeotia. "To them certain Athenians were privately making overtures, in a hope that they would put an end to the democracy and the building of the long walls."<sup>5</sup> The Athenians, suspecting their designs, marched out to meet them with their whole force and their allies from Argos and Thessaly, but were defeated at Tanagra in 457, after great slaughter on both sides.<sup>6</sup> Pericles was one of the Athenian commanders in this

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<sup>1</sup> Arist., *Ath. Pol.*, ch. 27, states that Pericles introduced the dicastic stipend as an off-set to the private liberality of Cimon. This must have been after the return of Cimon from exile, *i. e.*, after 457 and before his departure on his last expedition, *i. e.*, in 451.

<sup>2</sup> Cimon could not have been the builder of the long walls, since he was in exile while their construction was under way; Thucydides, I. 107-8; Plut., *Cimon*, 17.

<sup>3</sup> Thucydides, I. 93.

<sup>4</sup> This can be better said of Pericles than of Themistocles; see Plut., *Themist.*, 19.

<sup>5</sup> Thucydides, I. 107; Plutarch, *Themist.*, 19, also calls it a democratic measure.

<sup>6</sup> Thucydides, I. 107-8.

battle, and distinguished himself for great personal bravery. Cimon, who was in exile, offered himself and his comrades to the service of the Athenians. Although he was himself rejected, the heroic self-sacrifice of his companions in the battle won for him a speedy recall from exile, 457-6.<sup>1</sup> About two months after the battle, the Athenians more than retrieved their loss by their victory over the Boeotians at Oenophyta.<sup>2</sup> In the treasonable design of the oligarchs, displaying itself on the eve of the battle of Tanagra, was openly manifested for the first time a danger which had long been discernible, but which had now begun to assume threatening proportions. This danger lay in the substitution of party spirit for patriotism, in devotion to oligarchy or democracy, rather than to country and its freedom. Thus two political centers were formed in Sparta and Athens, to which the sentiments of oligarchs and democrats respectively moved in rapid gravitation. While the great mass of people throughout the Athenian empire remained loyal to Athens, there were those in every allied city and in the capital itself — few, indeed, yet powerful in their wealth, station, intelligence, and thorough organization — who sympathized with Sparta, who prayed and plotted for the overthrow of the Athenian government.<sup>3</sup> Political clubs had long existed, but were now exercising a greater and greater influence upon the course of events. The oligarchs could not plot openly, and the days of sedition were passed. Accordingly, they worked in secret through these clubs, coming forth from their retirement only at crises, which they hoped to turn to their advantage by a bold application of their forces. What may be said of party morals applies with greater propriety to the morals of clubs. These embodied the base motives and heartless selfishness of the age. They were a rank poison in the political life of Greece.<sup>4</sup> Between demo-

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<sup>1</sup> Plutarch, Cimon, 17.

<sup>2</sup> Thucydides, I. 108.

<sup>3</sup> Curtius, *History of Greece*, II. p. 239 ff.; III. pp. 339-40.

<sup>4</sup> Mahaffy, *Social Life in Greece*, pp. 178-180.

crats and oligarchs, stood as a third party the moderates — *ἐπιεικείς* — who, indeed, concealed the oligarchs within their own number, and who now constituted the retarding force in the development of democracy. To Aristotle they were the soundness and virtue of the state, and their rule was the most perfect form of democracy. They were, in general, men of moderate wealth, yet might include such of the *demus* whose political tone transcended their material circumstances. From the fall of the Areopagus till after the battle of Tanagra, the moderates had no leader of distinction, since Cimon, their natural champion, was in exile.<sup>1</sup> The termination of the bitter contest, as to whether the Areopagus or the Heliastic courts should control the government, was marked by the production in 458 of the *Oresteia* of Aeschylus.<sup>2</sup> Aristotle tells us the Athenian state now began to suffer a considerable deterioration. Many good men of both parties had been lost in the war, which now, carried on in a desultory manner, served only, in the opinion of Aristotle, to cripple the state. The blame of this he lays upon the government in sending out detachments of but 2,000 or 3,000 at a time, and upon the generals in command, whose only recommendation to appointment was the reputation of their fathers. It would be more just to Athens to say that her restless energy caused at times a waste of power. When we consider that in these years Athens formed an alliance with Argos, Megara, and Thessaly,

<sup>1</sup> Aristotle, *Ath. Pol.*, ch. 26, is certainly wrong in making Cimon's youth a reason for his absence from political life during this period. He was a young man, perhaps twenty-five years of age at the time of Xerxes' invasion. This would make him forty-two when the Areopagus fell, and a man of forty could not have been considered too young for the leadership in politics in those times. A more cogent reason is the one given above. Cf. Sandys, *Arist. Const. of Athens*, pp. 104-5, n. on *νεώτερον*.

<sup>2</sup> "Thus we may regard this tragedy as the harmonizing termination of one of the sorest constitutional struggles through which Athens had to pass"; Curtius, *op. cit.*, II. p. 426; cf. Bernhardt, *Geschichte der griechischen Literatur*, III. p. 287 ff.; Mahaffy, *History of Greek Literature*, I. p. 272, is wrong in placing the fall of the Areopagus so late. The *Oresteia* did not appear at the time of the conflict, as Curtius has observed.

defeated the Corinthians and Aeginetans, besieged the latter effectually in their island, and built the long walls, we cannot help thinking that her foreign and home policy was never more vigorous or successful. To be sure she met with reverses, as in the loss of the fleet dispatched to Egypt; but these did not seem to diminish her energy. Indeed it appeared for a time that her empire was not to be confined to the sea, for extending nothward, it came to include Boeotia and Phocis, and there was no telling where it would stop. But the weakness of Athens by land, the absence of any real need of her protection on the part of her new subjects, and the active opposition of Thebes and Sparta soon brought the land empire to an end.<sup>1</sup> To the student of constitutional history these events are of value, in that they manifest the strength and activity of Athens under a popular government. But Aristotle complains of a laxity in the internal administration of Athens, and in a departure from her old usage of strict adherence to law. It is indeed quite likely that the Ecclesia began with the fall of the Areopagus to take the management of affairs more directly into its own hands, and to control the administration through *psephismata*, or simple decrees at the pleasure of the people. The change would naturally take place with the liberation of the Ecclesia from the veto and inhibitory power of the Areopagus. The nine archons suffered immediately with that body by the cutting down of the life-long dignity and authority that awaited them on the expiration of their year of office. In the year 457, *Zeugitae* were admitted to the archonship, though no change was made in the manner of election. Before this, the *Zeugitae* had constitutionally filled only the lesser magistracies, but had often been admitted by a legal fiction to the archonship and other offices requiring high property qualifications. The *Thetes* were never admitted except by a legal fiction.<sup>2</sup> The archons were being superseded

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<sup>1</sup> Holm, Griechische Geschichte, II. p. 271.

<sup>2</sup> Cf. Sandys, Arist. Const. of Athens, p. 106.



in the administration by the generals, senate, ecclesia, and courts; and were now little more than clerks with routine duties. These measures were, no doubt, carried through with the approval of Pericles. It was his policy to remain in the back ground, "reserving himself, like the Salaminian trireme, for great occasions, while matters of lesser importance were despatched by friends or other speakers under his direction."<sup>1</sup> In this way he maintained his influence unbroken through so many years. While still a young man, he had shown his political bearing by the accusation (in 463) of Cimon in the *euthyna* of his generalship. He was undoubtedly connected with Ephialtes in his attack upon the Areopagus, and seems to have followed up that victory by robbing it of some other powers.<sup>2</sup> Cimon, his political antagonist, was converted to a friendly yoke-fellow by the application of ostracism in 461.<sup>3</sup> From the time of his return, in 457-6, a mild rivalry existed between the two leaders, though in the main their fields of action were, apparently by mutual agreement, separated.<sup>4</sup> The story is told that Cimon gained great influence in the state by the magnificence of his liturgies and by the beneficent liberality of private expenditures. Pericles, on the other hand, having comparatively little wealth, sought to counterbalance this influence by the introduction of a dicastic stipend. This was not a selfish expedient however to secure his personal ascendancy. His object was rather to ground the democratic state upon the Heliastic courts, as the aristocratic state had been grounded upon the Areopagus. The regular and frequent sessions of numerous *Dicasteria* was essential to this object and could be effected only by the introduction of pay. Moreover, most of the allies had by this time granted to Athens by treaty the power to settle all the more

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<sup>1</sup> Plutarch, Pericles, 7

<sup>2</sup> This seems to be the idea of Aristotle, Ath. Pol., ch. 27. Ephialtes may have contented himself with robbing it of its political powers, and Pericles have followed this up by depriving it also of its most important judicial duties.

<sup>3</sup> See p. 221.

<sup>4</sup> Plut., Cimon, 17.

important cases at law arising among them.<sup>1</sup> For despatching the judicial business of the allies and of the Athenians themselves, now greatly increased through their growing enterprise, and for enabling the courts to take the place of the Areopagus in the control of the Ecclesia, an exceedingly complex and extensive judicial system was evolved. The jury courts now became the most prominent feature in the public life of Athens.<sup>2</sup> A further addition to the judiciary was made in 453 by the re-establishment of the thirty itinerant judges, whose duty was to visit all the demes of Attica, settling petty cases, and bringing those of more importance before the Heliastic courts. The office of itinerant judge had been instituted by Peisistratus as a part of his rural policy. There were still many people in the country; and it was a relief both to them and to the government to have their petty cases settled outside of the capital.

In the archonship of Antidotus, 451 B.C., Pericles carried a measure restricting the *politeia* to those of civic birth on the side both of father and mother.<sup>3</sup> Under the Aryan gentile system, continuing down to Solon's time, civic birth on the side of both parents was an indispensable requisite to citizenship. This usage was confirmed by the law of Solon that "no *vóthos* should enjoy the *anchisteia*." On the adoption of the Cleisthenean constitution and the admission of many aliens to the citizenship, the sentiment of the Athenians on this point was naturally weakened, and violations of the law were, in consequence, overlooked. But it had now come about that citizenship at Athens conferred unexampled privileges, and hence was more highly valued and more zealously guarded than ever before. At the same time, the soundness of an ancient state depended upon purity of citizenship. Pericles

<sup>1</sup> Gilbert, Hdb. d. griech. Staatsalter., I. pp. 391, 402 ff.

<sup>2</sup> Aristophanes, Clouds, 207-8.

<sup>3</sup> Aristotle, Ath. Pol., ch 26; Plutarch, Pericles, 37; cf. Arist., Politics, III. 5 (p. 1278 a, 34); Isaeus, VIII. 19; XII. 9; Sandys, Arist. Const. of Athens, pp. 106-7.

was not an unprincipled politician who desired, by limiting the franchise, to gain popularity and support. His object was to maintain the integrity of Athenian citizenship and to keep the citizen body within the maximum numerical limit fixed by the conditions of ancient political society. In the same year, Cimon brought about a five years' truce with Sparta, and immediately after set sail with 200 ships for Cyprus, where he died in 449.<sup>1</sup> The departure of Cimon in 451 left Pericles without a rival. From this time forth he controlled the state with a firm hand. In 447-6 the battle of Coronea was lost, the land empire of the Athenians fell, and the state was saved only by the ability and tact of Pericles. A thirty years' peace was made in 445 between Athens and Sparta. Hostilities with Persia had already ceased, and the treaty of Callias was negotiated in the same year. Thus, Pericles was left free to carry out his home policy in the adornment of his city with public works, in strengthening Athens and the Peiraeus, in fostering the Themistoclean naval policy. All this required expense, and the confederate funds were freely used. Thucydides opposed the domestic policy of Pericles, declaring that the "contributions paid in for conducting the war against the Persians were employed to deck out the city like a vain woman, while at Susa citizens paid court to the Great King."<sup>2</sup> He was rebuked by a vote of ostracism, and the autocracy of Pericles established more firmly than ever. There were now more than 20,000 persons subsisting in whole or part upon the public purse.<sup>3</sup> These were the 6,000 dicasts, 1,600 archers, 1,200 horsemen, 500 senators, 500 guards of the dock-yards, 50 guards in the city, about 700 magistrates resident in Attica, about 700 abroad in the empire, 2,500 hoplites (at the beginning of the war), 4,000 men for the guardships (allowing 200 to each of the twenty), 2,000 men for the ships which collected the tribute (probably ten in

<sup>1</sup> Thucydides, I. 112; Wachsmuth, *Historical Antiquities of Greece*, II. p. 79.

<sup>2</sup> Curtius, *History of Greece*, II. p. 458, quoted from Plutarch.

<sup>3</sup> Arist., *Ath. Pol.*, ch. 24.

number, two to each of the five tribute-districts of the empire). Besides these, there were all those who were maintained in the Prytaneum at public cost, together with the orphans supported by the state and the guards of the prisons, the number of whom has not been stated. At the beginning of the war, the contributions from the allies amounted to six hundred talents, and this sum must have been greatly increased by the port-duties at Athens, tolls from the Bosphorus, and other sources of revenue.<sup>1</sup> Yet there was, after all, no idle mob in the city before the outbreak of the war.<sup>2</sup> The hoplites were all landed proprietors ; guards, senators, and magistrates were in constant service on every day of the year. The small dicastic fee of two obols did not suffice for daily subsistence ; yet it was indispensable to the service now required of these courts, since they must sit 240 to 300 days in the year. The dicasts were in general old men, whose years of manual labor were past. They must, however, have been men of some property ; and indeed no pauper class existed in Athens. At the close of the war, when the economic condition of the country was at its worst, there were only 5,000 Athenians who owned no land.<sup>3</sup> These facts go far toward determining the character of the Periclean democracy. The Athenians were now a very busy people, and most enthusiastic and energetic in their performance of the state services. Private interests and the trivial self-seekings of daily life were lost in the grander duties of ruling a magnificent empire and maintaining the glory and worth of a free government.<sup>4</sup> The whole organism of state and empire was pervaded and controlled by the mighty spirit of Pericles. Though a citizen without title,

<sup>1</sup> Whibley, *Political Parties in Athens*, makes the total income amount to 1,000 talents.

<sup>2</sup> *Id.* p. 42 ff.

<sup>3</sup> *Id.* p. 40.

<sup>4</sup> This does not mean that selfishness gave way to self-sacrificing patriotism, but rather that they exchanged "a paltry ambition after private wealth and comfort for a higher, though still selfish ambition after public fame and the glory of leading the course of public affairs"; Mahaffy, *Social Life in Greece*, p. 135.

holding merely the office of general by annual election, his wisdom, virtue, and genuine patriotism made his authority more absolute than that of kings and tyrants. His spotless character, calm temper, and generous devotion to the best interests of his countrymen commanded their love and confidence, while his peerless intellect, his mighty eloquence, his restless energy moved ceaselessly the gigantic machinery of his state and imperial government. There was no weak yielding to the popular will, — with the sternness and austerity of aristocratic or kingly rule, he directed uprightly and undeviatingly to his country's good, the minds of the citizens, for the most part by persuading them and showing them what was to be done; but sometimes by urging and pressing them forward against their will. In his foreign policy he curbed their passion for conquest, and directed their power to the consolidation of their present empire and to its maintenance against the Lacedaemonians. At home, he made Athens the school of Hellas, first city of all time in literature, science, art, and general culture. His was the policy of Ephialtes, — to break from the minds and souls of the poor their fetters, to give to the humblest Athenian citizen comfort in life, education, happiness, to fill his mind with the noblest sentiments and loftiest aspirations, to open to him the widest possible field for the exercise of all his faculties.<sup>1</sup> Such was the fruit which time bore to the Solonian constitution. In 431, on the invasion of Attica by the Spartans, he took the demes wholly into the city, thus completing the movement begun by Aristides.<sup>2</sup> Although intended as a war-measure, and indispensable, considering the unprotected condition of Attica and the weakness of her land forces, it was of vast political significance, as the last step in the growth of democracy. The *demus*, shut up in Athens, ruled in law courts and Ecclesia. Oligarchs and moderates were silenced for a number of years. The moral

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<sup>1</sup> For the character and aims of Pericles, see especially Plutarch, Pericles, and Thucydides, II. 35 ff., 65; cf. Holm, Griech. Geschichte, II. p. 271 ff.

<sup>2</sup> Thuc. II. 14.

deterioration which set in at this time and which affected society and government alike, arose from conditions independent of the policy of Aristides and Pericles, and would have influenced any government no matter what its form. A besieged city with an over-crowded population, a fearful and long continued plague, twenty-seven years of war, the wholesale ruin of fleets and armies, the dismemberment of the empire, — all these told powerfully on the character of the Athenian state. Yet what other state would not have been completely crushed by such reverses? The strength of Athens began with Cleisthenes ; under the Four Hundred and the Thirty she was weakest ; with the renewed democracy her strength was renewed, so far as exhaustion from the war permitted, — sufficient justification of the principle that freedom is the parent of virtue, strength, and courage.<sup>1</sup>

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<sup>1</sup> "We alone do good to our neighbors not upon a calculation of interest, but in the confidence of freedom and in a frank and fearless spirit"; Pericles in Thucydides, II. 40.



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